EMPLOYMENT TRIBUNALS

Claimant: Miss A Yates

Respondent: London Borough of Lambeth

Heard at: **London South ET** **On: 24, 25, 26, 27 and 28 July 2023**

Before: **Employment Judge Leith**
Mrs Bailey
Mrs O'Toole

Representation
Claimant: In person
Respondent: Miss Van Den Berg (Counsel)

JUDGMENT

1. **The complaint of direct discrimination on the ground of religion or belief fails and is dismissed.**

2. **The complaint of indirect discrimination on the ground of religion or belief fails and is dismissed.**

REASONS

Background

1. The claimant brings complaints of direct discrimination and indirect discrimination on the ground of religion or belief. The claimant originally also brought a complaint of breach of contract, which was brought against the first respondent only. The claimant withdrew her claims against the first respondent. The second respondent, Lambeth Borough Council, remains. For ease of reading, we describe the second respondent as "the respondent" in these written reasons.

2. We delivered our unanimous judgment orally at the conclusion of the hearing. The claimant requested written reasons, which we now provide along with our written judgment.

Claims and issues

3. The issues were set out in an agreed form following a Preliminary Hearing before EJ Rahman. We discussed the issues with the parties at the start of the hearing, and clarified some aspects of the list of issues. We agreed with the parties that the issues for the Tribunal regarding liability were as follows:

Jurisdiction

1. Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred; etc;

Direct discrimination

2. Did the respondent do the following things:

    a. David Jennings rolling his eyes when the claimant mentioned that she went to church
    b. Terminating the claimant's contract
    c. Requiring the claimant to wear a "rainbow" lanyard
    d. Treating the claimant detrimentally as set out below for not wearing a rainbow lanyard supporting LGBT+ rights, namely:
        i. being instructed not to speak to colleagues, including during lunch
        ii. Failing to invite to and allow the claimant to attend team meetings
        iii. Failing to allow the claimant to book onto training
        iv. David Jennings refusing to speak to the claimant

3. By doing those things, did the respondent treat the claimant less favourably than a comparable employee who did not share her religion/belief? The claimant relies upon Sharon Dupree, Stefanie Hart, and Juliana. In the alternative, the claimant relies on a hypothetical comparator.

4. If so, was it because of her religion/belief?

Indirect discrimination

5. Did the respondent apply the following PCPs to the claimant (the list of issues recorded that the claimant's case was that on 29 July

2019, Robert Dunne told the claimant that she had to wear a rainbow coloured lanyard):

a. Being required to wear a lanyard in rainbow colours
b. Those who refused to wear a rainbow lanyard being instructed not to speak to their colleagues, including during lunch
c. Failing to invite and allow to attend team meetings those team members of staff who refused to/did not wear a rainbow lanyard
d. Failing to allow those members of staff who refused to/did not wear a rainbow lanyard to book onto training

6. Did respondent apply (or would the respondent have applied) the PCP(s) to people who are not Christians?

7. Did the PCP(s) put Christians at one or more particular disadvantages compared to those who are not Christians; in that

    a. Wearing a rainbow lanyard went against her belief that it is wrong to promote homosexuality;
    b. They were not allowed to speak to colleagues;
    c. Not invited to team meetings;
    d. Not given the opportunity for training;
    e. Were ostracised by management;
    f. Had their contracts terminated.

8. Did the PCP(s) put the claimant at that/those disadvantage(s) at any relevant time? The claimant says:
    a. She was given instructions by Robert Dunne that came from David Jennings not to speak to her colleagues, including during her lunch break.
    b. She did not receive an invitation for and she was not allowed to attend team meetings. The claimant said the team meetings happened twice weekly in August, September and October and she did not attend any of them.
    c. She did not receive any emails giving her the opportunity to book onto training.
    d. David Jennings refused to speak to her. At the start of August, the claimant approached DJ about not having had a training induction. DJ looked very angry. He said he would speak to Alice. On the same day, Alice called me into an office and said ‘do you know who David is?’ The claimant said yes and she told me not to speak to DJ but to speak to her about anything. Other colleagues were speaking to DJ freely.
    e. Her contract was terminated.

9. If such PCPs were applied, was it/were they a proportionate means of achieving a legitimate aim. Though the respondent denies it required the claimant to wear a rainbow lanyard, in the alternative the respondent avers that it had a legitimate aim of requiring staff to wear a rainbow lanyard in order to promote equality, diversity and inclusion in the workplace. The Respondent avers that the wearing of a rainbow lanyard was a sign that it was against discrimination of all kinds against LGBTQ+ people.

Procedure, documents and evidence heard

4. We heard evidence from the claimant.

5. On behalf of the respondent we heard from:

   5.1. Robert Dunne, who at the relevant times was employed by the respondent as a Senior Commissioner.
   5.2. David Jennings, who at the relevant times was Interim Head of Service for Physical Disabilities Team
   5.3. Maria Burton, Assistant Director in the Transformation Team
   5.4. Alice Gyamfi-Sarpong, who at the relevant times was an Acting Practitioner Manager in the Transformation Team.
   5.5. Pamella Jackson, who at the relevant times was a Practitioner Manager.

6. All of the witnesses gave their evidence via pre-prepared statements, on which they were cross-examined. The claimant's witness statement was dated 23 July 2023, the day before the first day of the hearing. The respondent took no point about the late production of the witness statement, and Miss Van Den Berg confirmed that she was able to take instruction on it during the time that the Tribunal spent reading.

7. We had before us a bundle of 498 pages. We indicated to the parties that we would not read every page in the bundle, but would read those documents cross-referred in witness statements, and documents we were taken to in the course of evidence and submissions.

8. The claimant applied at the start of the hearing to have one page removed from the bundle. We refused that application, for the reasons we gave orally at the time.

9. On the second morning of the hearing, the respondent applied to adduce two further documents, which were less heavily-redacted versions of two spreadsheets which already appeared in the bundle. The claimant objected. We did not adduce those documents, again for the reasons we gave orally at the time.

10. We also had before us a chronology and a cast list prepared by the respondent.

11. At the end of the evidence we had the benefit of submissions from Miss Van Den Berg for the respondent, and from the claimant.

Fact findings

12. We make the following findings of fact on balance of probabilities. We have not covered every piece of evidence in our findings; rather we have focused on the key points necessary for us to reach a conclusion on the issues in the claim.

13. The claimant is a qualified social worker. She is a practising Christian. She described herself in evidence as being quite strict in her faith.

14. The claimant was engaged by the respondent from 29 July 2019, as an agency Social Worker.

15. She was interviewed for the position by Mr Dunne and Ms Gyamfi-Sarpong. It is common ground that the claimant mentioned her religion (or at least the fact that she attended Church) at interview, as she thought she recognised Ms Gyamfi-Sarpong from her church.

The claimant's role

16. The claimant's role sat within the respondent's Commissioning Team. Her line manager was Mr Dunne. Mr Dunne is not a social worker. Because of that, the claimant needed to have a professional supervisor, to supervise her case work. Ms Gyamfi-Sarpong was her supervisor initially. Ms Gyamfi-Sarpong worked in the Transformation Team. She reported managerially to David Jennings.

17. The claimant's role was to support a project to re-commission an external day service for adults with physical and sensory disabilities, Aspire. Part of the project was to review the service prior to recommissioning. Therefore the care packages of all of the service users who used the Aspire centre needed to be reviewed. The reviews all needed to be carried out by the end of March 2020.

18. The claimant was initially engaged for 12 weeks. Mr Dunne's evidence, which we accept, was that the respondent's normal practice is to engage agency workers for 12 weeks initially with their engagement being a rolling one after that. The respondent could then terminate the claimant's engagement at any time.

The start of the claimant's engagement

19. On 25 July 2019, the week before the claimant started work, she received an email from Mr Dunne setting out the arrangements for her first day. On the claimant's first day, 29 July 2019, Mr Dunne sent her sent some

documents about the background to her role. She was enrolled on some online training in how to use the respondent's IT systems.

20. The claimant's evidence was that she was shown where her team sat, where the lockers were and where the toilets were, but not shown the fire exits or introduced to members of the team.

21. Ms Gyamfi-Sarpong's evidence was that she took the claimant on a tour of the office, and where to find the printers, lockers, fire exits and toilets. It was common ground that although Ms Gyamfi-Sarpong showed the claimant the way to the fire exit, she did not actually take her down the fire stairs or show her where to go in the event of a fire.

22. On 31 July 2019, Mr Dunne sent the claimant a Learning Disability Forum newsletter, which contained further background about relevant things going on in the Borough.

23. On 2 August Mr Dunne sent the claimant some documents with information about services in the area.

24. On 5 August 2019, Ms Gyamfi-Sarpong sent the claimant an email with an attachment entitled "Induction information", which set out various links to training. The claimant's evidence was that she did not recall the document. Her evidence was that she had had some difficulty with her emails, and had not received some emails. Her evidence in cross-examination was that she had flagged this with IT several times. This was not in her witness statement, and there was no contemporaneous documentary evidence before us of her raising IT problems. Ms Gyamfi-Sarpong's evidence was that the claimant had not told her about any IT problems. We do need to make a finding on whether the claimant received the email of 5 August 2019. We are satisfied that it was at the very least sent to the claimant, with the induction information document attached to it.

<u>The lanyard</u>

25. On her first day, the claimant was given an ID badge. She required the ID badge to access the respondent's offices, and she was required to wear it at all times when at work. The ID badge was supplied to her on a rainbow lanyard, as part of the respondent's celebration of Pride month.

26. The claimant was not comfortable wearing the rainbow lanyard. She spoke to Ms Gyamfi-Sarpong. There was a dispute in the evidence regarding what was said in that conversation.

27. Ms Gyamfi-Sarpong's evidence was that the claimant told her that she "did not agree with homosexuality or gay rights because it's evil and satanic". Ms Gyamfi-Sarpong's evidence was that she told the claimant that she (the claimant) did not have to wear the rainbow lanyard. She said that she would find the claimant another lanyard, and she thought she had a spare lanyard

in her bag. The claimant said that she would go out at lunchtime and buy one herself.

28. C's evidence was that she simply asked Ms Gyamfi-Sarpong if she could go and buy her own lanyard and that Ms Gyamfi-Sarpong said that she could, and that she did not have to wear the rainbow lanyard. She denied making the "evil and satanic" comment.

29. The claimant suggested, both in her cross-examination of Ms Gyamfi-Sarpong and in submissions, that Ms Gyamfi-Sarpong's evidence about when that conversation was alleged to take place was inconsistent. We find that Ms Gyamfi-Sarpong's evidence on the point was consistent. Her evidence was that the conversation alleging that homosexuality was "evil and satanic" happened on the claimant's first day; we find that the claimant confused the conversation with a different conversation they had had at her interview.

30. It was put to Ms Gyamfi-Sarpong in evidence that (essentially) if the conversation had happened as she alleged, she would have reported it internally as it would have raised concerns about the claimant as a social worker. Ms Gyamfi-Sarpong's evidence was that she did not do so as she related to the claimant. Her evidence, in terms, was that this was because the claimant was a fellow Christian who she understood also to be a black single mother (like herself). Prior to the interview, the claimant had been away from work for several years caring for family members. Ms Gyamfi-Sarpong's evidence was that she wanted to support the claimant to be in work. Her evidence was that there was "no way she would report the claimant to get her into trouble". Her evidence was that she thought she could support the claimant, and educate her to see different views. Her evidence was also that she was a relatively inexperienced manager at the time, and that with the benefit of hindsight she would have dealt with the situation differently.

31. We found Ms Gyamfi-Sarpong's evidence regarding the claimant's comments, and why she had not reported them, to be consistent and compelling. We find that the claimant did make the comments as alleged by Ms Gyamfi-Sarpong.

32. It was common ground that the claimant then purchased her own plain lanyard, which she wore thereafter.

<u>The claimant's encounters with Mr Jennings</u>

33. Early in her engagement, on or around her second day in work, the claimant approached Mr Jennings. She introduced herself to him and told him that she had not had a fire safety induction. Mr Jennings apologised and said that he would raise it with Ms Gyamfi-Sarpong.

34. Ms Gyamfi-Sarpong spoke to the claimant about it. She took the claimant down the fire exit stairs to show her how to exit the building in an emergency.

35. Mr Jennings' evidence was that there was a second occasion when the claimant approached him, on around 11 or 12 August 2019. His evidence was that he was on the way to a meeting when the claimant approached him, and he did not have time to stop and speak. His evidence was that the claimant was trying to raise a casework issue with him, and that he therefore referred her to Ms Gyamfi-Sarpong as her supervisor. Mr Jennings' evidence in cross-examination was that he was managerially responsible for around 130 people at that time, so he would expect social workers with casework problems to go to their supervisor/manager or to the duty team in the first instance.

36. The claimant's evidence was that she could not specifically recall that conversation, but she did not deny that it occurred.

37. Mr Jennings' evidence regarding the second conversation was clear and consistent. We accept that the conversation occurred as he described it.

Eye-rolling

38. The claimant's evidence was that Mr Jennings rolled his eyes when she mentioned in conversation that she went to church, during what she described as "polite conversation". That allegation was not set out in terms in her witness statement. It was contained in the list of issues, but the only evidence from the claimant on the point was given in cross-examination. When it was put to her that she had not mentioned it in her witness statement, she sought to suggest that it was captured in the following sentence of her witness statement:

> "He [Mr Jennings] would give me scornful and frowning looks, even when I move to another side of the building after he asked me to move he would come over see if am there look at me and walk off."

39. Her evidence in cross examination was that, to her, frowning was the same thing as rolling his eyes. We do not accept that evidence, for three reasons. Firstly, we consider that frowning is very different to rolling eyes. Secondly, the context for the "frowning" comment in the witness statement implied that Mr Jennings was doing it from a distance. That is fundamentally different to the suggestion that it was done in the course of polite conversation. Thirdly, there was no reference in the claimant's statement to the alleged frowning having been in response to her talking about attending church.

40. The claimant was not clear in her evidence about when she had had social conversations with Mr Jennings. Mr Jennings' evidence was that he was not aware that the claimant attended church and that he could not recall ever having a conversation with the claimant about church attendance. The

allegation that he had rolled his eyes at the claimant was not put to him in terms in cross-examination.

41. We deal with our findings on the point in our conclusions.

Meeting of 12 August 2019

42. The claimant had a 1:1 meeting with Ms Gyamfi-Sarpong on 12 August 2019. Ms Gyamfi-Sarpong told the claimant that she needed to complete at least three pieces of work per week. For the claimant, undertaking a review of a service user, writing it up and signing it off would constitute one piece of work.

43. Ms Gyamfi-Sarpong told the claimant not to approach Mr Jennings directly unless it was something that required his input

44. Ms Gyamfi-Sarpong's evidence was that the claimant then called Mr Jennings a bully, and said that he did not like her because she was a Christian. Her evidence was she told the claimant that she had never felt bullied by Mr Jennings as a Christian, and that the claimant then accused her of defending Mr Jennings and asked Ms Gyamfi-Sarpong if she had been brought in to bully her.

45. The claimant denied that the part of the conversation regarding Mr Jennings took place, but she agreed in evidence that she had asked Ms Gyamfi-Sarpong if she (Ms Gyamfi-Sarpong) brought the claimant into the room to bully her. Ms Gyamfi-Sarpong's evidence on the point was not challenged in cross-examination.

Complaint regarding Ms Gyamfi-Sarpong

46. The next day, 13 August 2019, the claimant made a complaint about Ms Gyamfi-Sarpong. She accused Ms Gyamfi-Sarpong of bullying her, and of threatening to sack her from her post.

47. The claimant's complaint was investigated by Sam Buxo, Deputy Principal Social Worker. The complaint was not upheld, but it recognised that there was a difficult relationship between the claimant and Ms Gyamfi-Sarpong.

48. David Jennings forwarded the report to Mr Dunne on 16 September 2019. He explained in his covering email that he had concerns about the claimant's truthfulness.

49. The claimant was moved away from Ms Gyamfi-Sarpong's supervision, and was supervised by Avril Walton. Avril Walton was a Practitioner Manager in the Physical Disabilities Team. That move took effect initially on an interim basis from 16 August 2019.

Team meetings

50. The claimant attended one team meeting of the Transformation Team (Ms Gyamfi-Sarpong's team). After she moved away from Ms Gyamfi-Sarpong's supervision, she no longer attended meetings of the Transformation Team.

51. Mr Dunne's evidence, which we accept, was that the Commissioning Team did not have team meetings, but that the team was managed through emails and 1:1 meetings.

52. Mr Jennings' evidence was that all teams are different in terms of how they deal with team meetings. His evidence was, in essence, that team meetings were about operational issues for that team rather than forming part of the ongoing professional development for social workers.

53. We find that there would have been no reason for the claimant to attend Transformation Team meetings, particularly after her supervision moved from Ms Gyamfi-Sarpong. Indeed, it would have been inappropriate for her to do so given the circumstances in which her professional supervision arrangements had been changed. Nor would there have been any reason for her to have attended meetings of the Physical Disabilities Team, as she did not work in that team. We accept that the Commissioning Team, where the claimant's line management sat, did not have team meetings, so there were no team meetings for the claimant to attend.

Conversation with Robert Dunne in August 2019

54. The claimant's evidence was that in August 2019, Mr Dunne told her that she was doing really well and meeting her targets. Her evidence was that Mr Dunne asked her if she would like to stay on until March 2020, and that she agreed.

55. Mr Dunne's evidence was that while he may have spoken to the claimant about her placement, he never promised that it would be extended for a particular period of time. His evidence was that he would not have had the authority to make that decision.

56. We prefer Mr Dunne's evidence on the point. It was consistent with the other evidence he gave regarding the length of the claimants placement. We find that he did not have the authority to commit to extending her placement for a particular period of time, and that he did not do so. We consider it is more likely that the claimant misunderstood a comment made by Mr Dunne about the length of the project.

Conference

57. The respondent had a staff conference from 9 – 13 September 2023, which consisted of a programme of events for staff. Staff could attend those parts which were relevant to their role. While she was still being supervised by

Ms Gyamfi-Sarpong, the claimant asked if she could attend the conference. There is some dispute over the exact sequence of events; but it is common ground that the claimant was permitted to, and did, attend parts of the conference which were relevant to her role.

58. The claimant's evidence, in cross-examination, was that she requested extra training from Ms Gyamfi-Sarpong. That evidence was not in her witness statement. She did not say when that conversation had taken place. Her evidence about it in cross-examination was somewhat ambiguous. When it was put to her that, if the conversation had occurred, she would have mentioned it in her witness statement, she answered that it was the respondent's responsibility to put training in place. The suggestion that she had requested training from Ms Gyamfi-Sarpong was not put to Ms Gyamfi-Sarpong in cross examination. The claimant did not suggest, in the course of her own evidence, that she had made a request for training to anyone other than Ms Gyamfi-Sarpong.

59. Mr Jennings' evidence was that the respondent's training relevant to social workers was largely online and available to all relevant staff.

60. We find that the claimant did not expressly request training from Ms Gyamfi-Sarpong or anyone else (other than the request to attend the staff conference, which she was permitted to do).

Meeting of 18 September 2023

61. Maria Burton received a number of complaints from colleagues about the claimant being disruptive in the office by talking to other members of staff while they were working. She passed those concerns on to Mr Dunne.

62. Mr Dunne met with the claimant on 18 September 2019. He explained to the claimant that there had been concerns raised about her distracting colleagues by talking during work. Mr Dunne explained to the claimant that he had not seen this, as he sat in a different part of the office, but that it had been reported to him.

63. The claimant emailed Mr Dunne at 14:02 that day. The body of the email read as follows:

> "As you discussed to me that compliant has been made in regards to me speaking to other staff and distracting can, you said this is coming from two senior management. Can you please confirm if am not allowed to talk to anything at all am scared to speak to my colleagues concerning cases or just say hi. Even as colleagues are approaching me I am telling them I can't talk, as I am not sure what is going on. Thank you"

64. Mr Dunne responded at 16:54. The body of the email read as follows:

> "We spoke earlier, because it had been brought to my attention that some colleagues were concerned that they saw you speaking to other colleagues more than they would normally expect. As we work in different parts of the buildings, I don't see this myself, nor am I aware of what you are discussing when you are talking to other people.
> I did not mean to suggest that you're are not allowed to talk to anyone – that is certainly not the case. I wanted to suggest that in general we all should:
>
> - When discussing work questions, to go to your supervisor and line manager (Avril or me) first if available, but to ask other colleagues questions when they are the most relevant and appropriate person.
> - When having non-work related conversations, to avoid interrupting people in their work and to try to mainly do it when eg having lunch, getting a hot drink etc.
>
> It may be the case that you are already following these guidelines without needing to be told, and I'm sorry if that is the case – it's just that I can't know that for sure without asking. I think in general you are able to observe the general working culture we have here, and how other staff interact with each other – I just wanted to remind you to be mindful of how you interact with other staff to avoid any possible misperception by others.
> Hope this is clearer – do come and see me and we can discuss further if it is not."

65. We deal with our findings on this point in our conclusions.

Supervision meeting

66. Ms Walton was due to retire from the respondent in late September or early October 2019.

67. Before Ms Walton's retirement, the claimant had a three-way supervision meeting with Mr Dunne and Ms Walton. Mr Dunne kept notes of that meeting. Ms Walton suggested various ways that the claimant could improve her work. The claimant did not request any additional training. The notes of the meeting recorded that the claimant would prepare and maintain a review tracker document which would show what work had taken place, what had been completed, what the outcomes were, and what remained to be done.

68. Mr Dunne created a spreadsheet for the claimant to use. He sent it to her on 24 September 2019. The claimant completed the spreadsheet and sent it to Mr Dunne on 7 October 2019. The version of that spreadsheet in the bundle was heavily redacted, but it appeared that 10 rows had been completed. Mr Dunne responded querying whether that was all of the work/reviews the claimant had undertaken so far. Later that afternoon the claimant sent Mr Dunne a further copy of the spreadsheet. On the version

in the bundle before us, which was again heavily redacted, 17 rows had been completed. The claimant did not accept that that was the same version she had completed.

69. Mr Dunne's evidence was that his understanding of what the claimant had completed at that point, which he gleaned from the spreadsheet, was that three reviews were completed, two were in progress, two required no further action because the client had stopped attending the day service, one was blank, and the remaining cases had been started but not completed.

70. At that point, the claimant had been in post for 10 weeks. It was put to the claimant that, setting aside the first week of her engagement, she would have been expected to have completed 27 piece of work by then (three per week for nine weeks). The claimant did not accept that proposition. Her evidence was that the given that she was dealing with people, the expectation could not be reduced to numbers in that way.

71. It was put to Mr Dunne that he had not discussed his concerns about the claimant's productivity with her agency. Mr Dunne's evidence was that he had not become aware of the issues with her productivity towards the end of September 2019, when Ms Walton was retiring, and that in hindsight he should have picked it up sooner. His evidence was that the claimant was the first agency member of staff he had ever managed, and he was not aware that he could or should approach the agency about performance issues.

72. On the claimant's own evidence, the expectation that she complete 3 reviews a week was made clear to her early on in her engagement. We find that as of 7 October 2019, the claimant had completed significantly fewer reviews than the respondent would have expected her to have done at that stage.

73. On Ms Walton's retirement, Pamella Jackson, Practitioner Manager, took over the role of the claimant's professional supervision.

<u>The instruction to wear a rainbow lanyard</u>

74. The claimant's evidence was that on, 10 or 11 October 2019, Mr Dunne placed a rainbow lanyard on her desk and instructed her to wear it. That allegation was not set out in terms in either the claimant's pleaded case or the list of issues. The (agreed) list of issues recorded the instruction as having been given on 29 July 2019, the first day of the claimant's engagement.

75. Mr Dunne's evidence was that this had never happened. His evidence was that he had never asked the claimant to wear any kind of lanyard, and never asked her why she wasn't wearing a rainbow one. His evidence was that he was aware significantly before October 2019 that the claimant wore a

lanyard she purchased for herself, although he could not recall exactly how or when he became aware.

76. We were referred in evidence to an extract from the respondent's website dated June 2019 (printed on 4 April 2023) regarding Pride month. That said that:

> "We have already distributed over 2,000 rainbow lanyards to council officers and schools. We encourage everyone to wear their lanyard to show support. If you do not yet have a lanyard and would like one please contact Dean Evans."

77. Mr Jennings' evidence was that he had never spoken to Mr Dunne about a lanyard for anyone. His evidence was that lanyards were normally given out when ID cards were issued, and that if someone wanted an alternative lanyard they could go to Facilities Management. He explained that sometimes lanyards were produced for specific events. His evidence was that the rainbow lanyards were available for a number of months, although as they were ordered in small batches sometimes they ran out and had to be re-ordered.

78. Ms Jackson's evidence was that she did not wear a rainbow lanyard during the period when the claimant was engaged by respondent. Her evidence was that she wore purple lanyards during that period. Her evidence was that asked for a rainbow lanyard when she was aware that there were some, but they were unavailable at the time that she asked. She explained that she was told to contact someone called Dean but never got around to it. Her evidence was that the majority of her team did not have rainbow lanyards, and she was never asked to wear one.

79. Ms Gyamfi-Sarpong's evidence was that she did not wear a rainbow lanyard, but that that was not because of her beliefs; rather, she had a collection of different coloured lanyards, and she would choose one each day which matched her outfit. Her evidence was that no one asked her to wear a rainbow coloured lanyard. Her evidence was that some members of her team did wear rainbow lanyards, but others wore different styles or colours. She explained that her understanding was that staff could wear whatever lanyard they liked as long as they had their ID.

80. We deal with our findings on this point in our conclusions.

<u>Change in Mr Jennings' behaviour toward the claimant</u>

81. The claimant's evidence was that after she refused to wear the rainbow lanyard she said she was given by Mr Dunne, Mr Jennings stopped greeting her or responding to her greetings. She did not give, in her witness statement, any specific examples of situations where Mr Jennings had failed to respond to her or failed to greet her.

82. Mr Jennings' evidence was that he was not aware of any change in his behaviour towards the claimant. His evidence was that he would always say hello to anyone he saw.

83. We deal with this point in our conclusions.

11 October 2019

84. The claimant's evidence was that on 11 October 2019, a staff meeting was due to take place. Her evidence was that Ms Gyamfi-Sarpong told her, in front of colleagues, that she was not allowed to attend the team meeting because Mr Jennings has said she was not permitted to. The claimant's evidence was that she felt embarrassed, bullied, oppressed, low and very lonely.

85. Ms Gyamfi-Sarpong's evidence was that she was told by a colleague, Juliana, that she had received a text message from the claimant asking to join the meeting. Ms Gyamfi-Sarpong's evidence was that she told Juliana that the claimant could not attend the meeting, because at that point she had not been in contact with the claimant for several weeks.

86. We have already found that it would not have been appropriate for the claimant to have been attending meetings of the Transformation Team after she stopped being supervised by Ms Gyamfi-Sarpong. In light of that, we do not need to make a finding about when and how the message about the October 2019 team meeting was conveyed to the claimant.

Meeting on 14 October 2019

87. Mr Dunne arranged to meet the claimant on a fortnightly basis to review her cases. The first meeting took place on 14 October 2019. Mr Dunne reminded the claimant that she needed to complete three pieces of work per week.

88. On 24 October 2019 the claimant emailed Mr Dunne as follows:

> "Trust this email finds you well. Please see the up to date Tracker, am sure there is more to do on it However some of the cases are allocated to various teams and social worker. Tomorrow I will get Pam to locate some more cases to me for reviews. I must be honest mostly all of the cases have not had a review for many years.
> I had meetings with families and carers who have been very angry, rude and disappointed and sometimes reluctant to engage with me. This I can understand their frustration. Recently One example was [REDACTED]. Since he had a stroke over 4 years ago he had one session of speech input and the worker was off sick and was never replaced according to the family. I have to come back and speak to that department. Most of the cases I am reviewing are reassessment, complex, it been so long, some have changed address, GP, different

> things have happened and it not reflected on the system. All the relevant information have to be gather and it very time consuming. Waiting on colleagues and other professional to get back to you can be quite challenging at times, there is so much to do I am not complaining but doing the best I can. I am working as quickly and as safely can to make sure the reviews are done properly in an ethical manage and in line with the Care Act 2014 I am very aware we are looking to reduce the numbers at Aspire but I have to do it properly. I will update the tracker as much as necessary in the week. Thank you."

Termination of the claimant's engagement

89. On 25 October 2019, Mr Dunne met with David Worral (his line manager) and Mr Jennings. They reviewed the number of pieces of work the claimant had completed.

90. Mr Dunne's evidence was he took the decision to terminate the claimant's engagement. His evidence was that because it was a significant decision he discussed it with his line manager, Mr Worrall. His evidence was that while they spoke to Mr Jennings as he was a sponsor of the project, he did not guide Mr Dunne's decision to any significant extent. Mr Dunne's evidence was that the reason the claimant's engagement was terminated was that given the claimant's lack of progress, and her comments about the difficulty she was having in completing the reviews (which he characterised as "defensive"), he did not believe that she would be able to fulfil her role and complete the project with the allocated time.

91. Mr Jennings' evidence was that he was asked questions by Mr Dunne, and informed him of what the expectation would be of an agency social worker, but that he was not the decision-maker.

92. On 30 October 2019, Mr Dunne informed the claimant that her engagement was being terminated.

93. The claimant's evidence was that Mr Dunne told her that her engagement was being terminated at the instigation of Mr Jennings. Mr Dunne denied that. His evidence was that he told the claimant her engagement was being terminated because she was not completing enough reviews. His evidence was that he told the claimant that he had made the decision in consultation with relevant senior managers, but did not specify Mr Jennings' name.

94. We deal with our findings on this in our conclusions

95. It is common ground that Mr Dunne explained to the claimant that she would be given one week's notice.

After termination of the claimant's engagement

96. On 31 October 2019, the claimant emailed Andrew Travers, Chief Executive of the Respondent, copied to Mr Dunne, Mr Jennings and Miss Burton. The claimant indicated that she was in shock after her engagement was terminated. She alleged that Mr Dunne had said the instruction to terminate her engagement came from Mr Jennings. She alleged that Mr Jennings had discriminated against her based on her race. She revisited the allegation that Mr Dunne had told her not to speak to colleagues, saying this:

> "You told me I am not allowed to speak to anyone, you stated that the instructions was coming from higher, I have been oppressed in Lambeth, discriminated against as well as the service users that I have worked with and working with."

97. On 1 November 2019, the claimant emailed Mr Travers again. The subject line of the email was "COMPLAINT AGAINST DAVID JENNINGS FOR DISCRIMINATION AGAINST ME FOR BEING A CHRISTIAN AND A BLACK WOMAN". Attached to the email were a number of screenshots taken from Mr Jennings' facebook page, as follows:

    97.1. One was a stylised picture of Jesus sitting at a table, with nails through his hands. One hand was in a bowl of liquid, the other was being held by a lady who was applying paint or nail polish to the nail. The caption read "Jesus getting his nails done".
    97.2. One was a photograph of Mr Jennings embracing another man, who we understand is his husband.
    97.3. One was a photograph (taken from the rear) of a person standing on a pavement wearing boots, a Santa Claus coat and a Santa Claus hat (but no trousers). The person in the Santa Claus coat holding the coat open. Various pedestrians (including one on a bike) looked surprised/shocked.
    97.4. One was a photograph of an apparently scantily clad lady looking surprised, with a person in a mask and boiler suit standing behind them. The caption read "Halloween H2Oooooh"
    97.5. One was a picture of Jesus on the cross, next to a picture of some tubes of the DIY product "No more nails", with the caption "A miracle". Mr Jennings had added the caption "Happy Easter" when posting the picture. There were four comments below the picture:
        97.5.1. One from a Caitlin McCarthy, saying "Yay, it has risen again!"
        97.5.2. One from Mr Jennings, apparently in response, sating "Can't disappoint!". Underneath that comment was a "like" reaction.
        97.5.3. One from an Emily van Eyssen, saying "Every year!!"
        97.5.4. One from Mr Jennings, apparently in response, saying "I know. It comes round religiously." Underneath that comment there was a "like" reaction and a "laughter" reaction.

98. Mr Jennings' evidence, which we accept, was that the images were taken from his personal facebook page. His evidence was that his facebook page

was private, but that as a result of other users having commented on or interacted with those posts, they had become viewable to the public.

99. The claimant is not friends with Mr Jennings on Facebook. Her evidence was that Stephanie Hart drew Mr Jennings' Facebook to her attention. She then searched for Mr Jennings, and found the posts herself in that way. She took screenshots of them. The claimant's evidence was that the screenshots she had taken couldn't be separated, which was why she sent all of them to Mr Travers.

100. We do not accept the claimant's evidence that the screenshots could not be separated, for the following reasons:

100.1. The screenshots were taken from a mobile telephone. Each screenshot showed the phone icons (including time and battery percentage) across the top, and the phone soft buttons (home and back) along the bottom.

100.2. Because the phone clock was visible, the screenshots were time-stamped. The time stamps were not consistent – for example, the "miracle" was screenshotted at 13:09, and the photograph of Mr Jennings and his husband was screenshotted at 13:12.

100.3. On the email sending the documents, she said "please see the attached documents and photos". If she had only attached one, indivisible document we consider that she would only have referred to the "attached document" or similar.

100.4. The message headers to the email show that there were five files attached to the email. Each had a filename in the format "Screenshot", then several numbers, then "Facebook".jpg.

101. It follows that we find that the claimant made a conscious choice to screenshot, and send to the respondent, a photograph of Mr Jennings and his husband (albeit that we accept that she did not, at that time, know that the other gentleman in the photograph was Mr Jennings' husband). We find that the claimant's evidence to the contrary was untruthful.

102. In her covering email, the claimant explained that the images were evidence that Mr Jennings had discriminated against her because she is a Christian and a black woman. She indicated that she was going to contact the EHRC and Christian Concern. She characterised the images as anti-religious, and as mocking Christianity. She explained that she found it very disturbing and hurtful. She further accused Mr Jennings of discriminating against service users.

103. We should record, for completeness, that Mr Jennings' evidence was that he did not regard the postings as anti-Christian. His evidence was that he is a Catholic, and that he found the posts amusing. We accept that the claimant found the images upsetting. We do, of course, note that she deliberately sought them out.

104. On 4 November 2019, the claimant forwarded the email to various senior managers within the respondent, as well as to her agency.

105. Later that day, and in light of the emails the claimant had sent, Maria Burton decided to end the claimant's access to the respondent's IT systems and client records immediately. The claimant was nonetheless paid until 8 November 2019.

106. The claimant notified ACAS under the early conciliation process of a potential claim on 25 January 2020 and the ACAS Early Conciliation Certificate was issued on 25 February 2020. The claim was presented on 27 February 2020.

Law

107. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee:

107.1. In the terms of employment;
107.2. In the provision of opportunities for promotion, training, or other benefits;
107.3. By dismissing the employee;
107.4. By subjecting the employee to any other detriment.

108. In order to be subjected to a detriment, an employee must reasonably understand that they had been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11).

Protected characteristics

109. Religion or belief is a protected characteristic (s.10 EqA 2010)

Direct discrimination

110. The definition of direct discrimination is contained in section 13(1) of the Equality Act 2010:

> "(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."

111. The comparison may be to an actual or a hypothetical comparator. In either case, there must be no material difference between the circumstances relating to each case (s.23(1)). That is, the comparator must be in the same position in all material respects save only that he or she is not a member of the protected class *(Shamoon v Chief Constable of the RUC* [2003] ICR 337).

112. In considering whether a claimant was treated less favourably because of a protected characteristic, the tribunal generally have to look at

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. However the decision in question must be significantly (that is, more than trivially) influence by the protected characteristic.

Indirect discrimination

113. The definition of Indirect Discrimination is set out in section 19 of the Equality Act 2010:

> (1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
> (b) It puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
> (c) It puts, or would put, B at that disadvantage, and
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim.

Burden of proof

114. Section 136 of the Equality Act deals with the burden of proof:

> "(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"

115. The provision prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which "a reasonable tribunal could properly conclude" on balance of probabilities that there was discrimination. It must, however, be something more than merely a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33).

116. The burden of proof at that stage is on the Claimant (*Royal Mail Group v Efobi* [2021] UKSC 22). The employer's explanation is disregarded.

117. The Court of Appeal gave guidance to tribunals the application of the burden of proof provisions in the case of *Igen v Wong* [2005] EWCA Civ 142 (the guidance was given in the context of the Sex Discrimination Act, but subsequent authorities have confirmed that it remains good law).

> "(1) Pursuant to section 63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s. 41 or s. 42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as "such facts".
> (2) If the claimant does not prove such facts he or she will fail.
> (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".
> (4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
> (5) It is important to note the word "could" in s. 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
> (6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.
> (7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with section 74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within section 74(2) of the SDA.
> (8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to section 56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
> (9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.

(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.
(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.
(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.
(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

118. If the claimant satisfies that initial burden, the burden shifts to the employer at stage 2 to prove on balance of probabilities that the treatment was not for the prescribed reason.

Conclusions

119. We deal first with the claim of direct discrimination.

David Jennings rolling his eyes when the claimant mentioned that she went to church

120. We find that the interactions between the claimant and Mr Jennings were very limited. We prefer Mr Jennings' evidence regarding this allegation, which was clear and consistent (in marked contrast to that of the claimant). We find that the claimant did not discuss her attendance at church with Mr Jennings, and that Mr Jennings did not roll his eyes at the claimant.

121. It follows that it could not have constituted less favourable treatment. This aspect of the claim fails.

The respondent terminating the claimant's contract.

122. It is common ground that the respondent terminated the claimant's engagement.

123. We find that Mr Dunne made the decision to terminate the claimant's engagement. He discussed it with his line manager, and received professional advice from Mr Jennings in his capacity as a social work manager, but the decision was ultimately his alone. We accept Mr Dunne's evidence in that regard.

124. We find that Mr Dunne made the decision because, at the rate the claimant was working, the project would not be delivered within the allotted timescale. We reach that conclusion because:

124.1. The project was time-sensitive; even on the claimant's own evidence she was aware that it needed to be completed by March 2020.

124.2. The consistent evidence before us was also that the claimant had been set a target of three completed reviews per week, and that she was well aware of that target.

124.3. The claimant had failed and was failing, by some distance, to meet that target, despite being reminded of its importance on a number of occasions. Although the claimant did not accept that the spreadsheet in the bundle was the versation she had completed, she did not suggest in evidence that she had completed more reviews than Mr Dunne understood her to have completed. Indeed that was consistent with her email of 24 October 2019.

125. We accept Mr Dunne's evidence that he mentioned that he had discussed the decision with "relevant senior managers", but did not mention Mr Jennings' name. We consider that the claimant assumed that Mr Jennings was involved because he was a senior manager.

126. The claimant named as comparators Sharon Dupree, Stefanie Hart and Juliana. It was not addressed in the claimant's evidence how they were said to have been in the same position as the claimant. In our judgment, the correct comparator in respect of this allegation is an agency worker who is not a Christian, and who had been engaged on a time-limited project and had failed to meet the target of three completed reviews per week.

127. We find that a comparable employee would not have been treated any differently in terms of her engagement being terminated. Given the importance of the project being completed in time, and the distance by which the target of three reviews per week was being missed, we consider that the claimant was not treated any less favourably than the hypothetical comparable would have been.

128. It follows that this aspect of the claim fails.

<u>The respondent requiring the claimant to wear a "rainbow" lanyard</u>

129. We find that Mr Dunne never asked the claimant to wear a rainbow lanyard. We conclusion for the following reasons:

129.1. Mr Dunne was clear and consistent in his evidence that the conversation never occurred, and that he never asked the claimant to wear a rainbow lanyard.

129.2. Set against that, the claimant's position evolved. The allegation that the instruction was given on 10 or 11 October was made for the first time in her witness statement (which was produced on 23 July 2023, the day before the hearing started).

129.3. The weight of the evidence before us was that wearing a rainbow lanyard was not mandatory. Lots of different colours and styles of lanyards were worn within the respondent.

129.4. The claimant's own evidence was that at the start of her engagement, when she indicated that she did not wish to wear a rainbow lanyard, she was told by Ms Gyamfi-Sarpong that that was fine.

129.5. The weight of the evidence before us was also that individuals who chose not to wear a rainbow lanyard were not instructed or even asked to do so. The sole piece of evidence that any member of staff was instructed to wear a rainbow lanyard was the claimant's own evidence about her own position; which as we have already said, evolved considerably.

129.6. It is therefore in our judgment inherently implausible and inconsistent with the remaining evidence that the claimant was instructed to wear a rainbow lanyard in October 2019.

130. Having concluded that this did not occur, it follows that it could not have constituted less favourable treatment. This aspect of the claim fails.

<u>The claimant being instructed not to speak to colleagues, including during lunch</u>

131. We find that the claimant was not instructed not to speak to colleagues. The claimant misunderstood what Mr Dunne said to her in the meeting on 18 September 2019. We find that what Mr Dunne said was broadly in line with what he set out in his email of 16:54. While we accept that the claimant did genuinely misunderstand what she was told by Mr Dunne in the meeting, she should have been in no doubt on receipt of his email about what the true position was.

132. Having concluded that this did not occur, it follows that it could not have constituted less favourable treatment. This aspect of the claim fails.

<u>Failing to invite to and allow the claimant to attend team meetings</u>

133. We have found that there was no team meeting to which the claimant should have been invited. The claimant did attend a number of 1:1 meetings with Mr Dunne, which was the practice in the Commissioning Team rather than having team meetings. It follows that the allegation that the respondent failed to invite the claimant to team meetings fails.

<u>Failing to allow the claimant to book onto training</u>

134. We find that there was online training available to the claimant. She was also permitted to attend the staff conference, and she received an induction. We found that the claimant did not, as she alleged, ask Ms Gyamfi-Sarpong for training. We therefore conclude that the respondent could not be said to have failed to have allow the claimant to book onto training.

135. It follows then that this allegation fails.

David Jennings refusing to speak to the claimant

136. We have found that there was one occasion on which Mr Jennings refused to engage in a detailed discussion with the claimant, because he was on the way to a meeting, although he did not refuse to speak to her altogether.

137. We have found that the claimant only had very limited contact with Mr Jennings. We find that there was no other occasion when Mr Jennings refused to speak to the claimant, either or before or after 11 October 2019.

138. In respect of the incident where Mr Jennings refused to engage in a detailed discussion with the claimant, we do not consider that that could properly be described as "refusing to speak to the claimant", which is what is alleged.

139. In any event, it was not put to him that he would have treated any other member of staff differently in those circumstances. Given the breadth of his managerial portfolio, and the fact that he was on the way to a meeting, we conclude that he would have treated any other colleague in the same way in those circumstances.

140. It follows that this allegation fails.

Indirect discrimination

141. Did the respondent apply the following provisions, criteria or practices ("PCPs") to the claimant:

141.1. Being required to wear a lanyard in rainbow colours

141.2. We have found that the respondent did not require anyone to wear a rainbow coloured lanyard. It follows that the respondent did not have such a PCP, and did not apply any such PCP to the claimant. Therefore this aspect of the claim fails.

141.3. Those who refused to wear a rainbow lanyard being instructed not to speak to their colleagues, including during lunch

141.4. We have found that the claimant was not instructed not to speak to colleagues, including during lunch. We have also found that the respondent did not require the claimant to wear a rainbow coloured lanyard. It follows that the respondent did not have such a PCP, and did not apply any such PCP to the claimant. Therefore this aspect of the claim fails.

141.5. Failing to invite and allow to attend team meetings those team members of staff who refused to/did not wear a rainbow lanyard

141.6. We have found that there was no team meeting to which the claimant should have been invited. We have also found that the respondent did not require the claimant to wear a rainbow coloured lanyard. It follows that the respondent did not have such a PCP, and did not apply any such PCP to the claimant. Therefore this aspect of the claim fails.

141.7. Failing to allow those members of staff who refused to/did not wear a rainbow lanyard to book onto training

141.8. We have found that this did not occur, in that the respondent did not fail to allow the claimant to book onto training. We have also found that the respondent did not require the claimant to wear a rainbow coloured lanyard. It follows that the respondent did not have such a PCP, and did not apply any such PCP to the claimant. Therefore this aspect of the claim fails.

142. As we have concluded that each of the claimed PCPs was not a PCP which was applied to the claimant, we do not need to consider the remaining limbs of the test in respect of indirect discrimination.

143. The claims of direction discrimination and indirect discrimination on the ground of religion or belief fail and are dismissed.

Employment Judge Leith

31 July 2023