# EMPLOYMENT TRIBUNALS

**Claimant:** **Miss G Krothe**

**Respondent:** **Birmingham Children's Trust**

**Heard at:** **Birmingham** **On:** **10, 11, 12, 13, 14, 17, 18, 19 and 20 July 2023**

**Before:** Employment Judge Edmonds
Mrs W Ellis
Mr J Sharma (by CVP)

**Representation**
Claimant: In person
Respondent: Miss W Miller, counsel

# RESERVED JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of direct race discrimination is not well-founded and/or is out of time and is dismissed.

2. The complaint of victimisation is not well-founded and is dismissed.

# REASONS

## Introduction

1. The claimant was employed by the respondent as an Integrative Therapist between 13 January 2014 and 5 October 2020, when her employment ended due to her resignation. Although her resignation form (page 921) recorded her leaving date as 6 October 2020, the claimant said that it was 5 October 2020 and given that she resigned on two months' notice on 5 August 2020, we find that this was correct. She is Asian and compares herself to Caucasian colleagues.

2. ACAS early conciliation started on 31 December 2020 and ended on 11 February 2021, with her claim form being submitted on 1 March 2021.

3. The claim is essentially about the way that the claimant was treated over a number of years by various members of the management team and whether that treatment was motivated by her race or by other factors. The treatment relates to a number of matters but largely centres around the respondent raising performance and conduct concerns with her which she feels were unjustified.

## Claims and Issues

4. This is a claim for race discrimination, specifically direct race discrimination and victimisation. The claimant's original claim form had also included a claim for constructive unfair dismissal, however that was dismissed upon withdrawal by Judgment dated 10 February 2023.

5. The issues in the case had been subject to various discussions between the parties. There was a Preliminary Hearing on 3 October 2022 before Employment Judge Ord, following which a draft List of Issues was sent to the parties, with the parties being ordered to work together to finalise that list (pages 69 to 83).

6. This resulted in the claimant providing a table setting out a chronological narrative of events, amounting to more than 250 pages (pages 87 to 373). Therefore, a further one day Preliminary Hearing before Employment Judge Harding was held on 14 June 2023, to assist the parties to finalise a list of issues. The parties were able to identify the asserted protected acts, less favourable treatment and alleged detriments at this hearing (page 397 to 405)

7. The parties then worked together to finalise an agreed List of Issues which appeared at pages 934 to 938 of the bundle for hearing. The allegations were almost the same as the version which had been discussed at the Preliminary Hearing on 14 June 2023 but had been slightly amended and included tracked changes to show where amendments had been made. There were a significant number of factual allegations to consider and therefore we do not repeat them here, however in the Conclusions section below we have set each out in italics before drawing our conclusion in respect of each of them.

8. The issues to be determined were:

   Time Limit

   1) Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The tribunal will decide:

      1.1 Whether the claim was made within three months (allowing for any early conciliation extension) of the act complained of.

      1.2 If not, whether there was conduct extending over a period.

      1.3 If so, whether the claim was made within three months (allowing for any early conciliation extension) of the end of that period.

1.4 If not, whether the claims were made within such further period as the Tribunal thinks is just and equitable. The tribunal will decide:

1.4.1 Why the complaints were not made in time.

1.4.2 In any event, whether it is just and equitable in all the circumstances to extend time.

Direct Discrimination

2) Did the respondent treat the claimant less favourably than her comparator(s) in materially similar circumstances? The actions relied on as less favourable treatment were set out in the agreed List of Issues at page 934 and are repeated in the Conclusions section below.

3) If so, was this because of the claimant's race?

4) The claimant relies on the following comparator(s):

4.1 Claimant has said "Every member of the team was Caucasian, reporting to the same managers."

Victimisation

5) Did the claimant do a protected act by doing the following:

5.1 In 2018 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination

5.2 On 15 February 2018 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination

5.3 On 19 October 2018 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination

5.4 On 11 September 2019 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination.

6) Did the claimant do a protected act in bad faith?

7) Did the respondent do the matters set out in the agreed List of Issues at page 934 and as repeated in the Conclusions section below?

8) If so, did these things amount to a detriment?

9) If so, was the Claimant subjected to any or all of these detriments because she had done a protected act or acts?

Remedy

10) What financial losses has the discrimination caused the claimant?

11) Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job? If not, for what period of loss should the claimant be compensated?

12) Has the discrimination caused the claimant injury to feelings? If so, how much compensation should be awarded for that?

13) Is there a chance that the claimant's employment would have ended in any event?

14) If so, should the compensation be reduced as a result?

15) Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

16) If so, did the respondent or the claimant unreasonably fail to comply with it?

17) If so, is it just and equitable to increase or decrease any award payable to the claimant?

18) If so, by what proportion (up to 25%)?

19) Should interest be awarded? If so, how much?

**Procedure**

9. At the outset of the hearing the respondent's representative enquired as to whether the hearing could take place by CVP instead of in person, on the basis that this would expedite matters given the number of witnesses. Having heard representations from the claimant, who opposed that application, we concluded that the hearing should continue in person. We did however agree that the parties could discuss between themselves whether they could reach agreement on any particular witness giving evidence by CVP (for example, if their evidence was particularly brief and it was difficult for them to travel to the hearing). In the end some of the claimant's witnesses, whose evidence was brief, did indeed give evidence via video.

10. The hearing had originally been listed for 8 days, however it was recognised at a Preliminary Hearing on 14 June 2023 that this was unlikely to be sufficient. The hearing was re-listed for 10 days (using the original listing window and extending it by two days), however due to Tribunal availability in the end only 9 days were available for the case to be heard. This allowed sufficient time for all evidence, submissions and deliberations, however it was necessary to reserve Judgment. It was explained to the parties that it was likely to be close to three months before the parties received the outcome.

11. The claimant was heavily pregnant during the hearing and the Tribunal ensured that the claimant was offered regular breaks. The Tribunal also enquired as to whether the claimant would wish the claim to be via video given that she was heavily pregnant however as set out above the claimant preferred the hearing to go ahead in person.

12. We were presented with a file of documents initially amounting to 938 pages which had been agreed between the parties ("the Bundle"). Page references below are to pages in the bundle, unless otherwise stated.

13. Within the Bundle, there was the detailed table of over 250 pages from the claimant referenced in paragraph 6 above. Within that table, the claimant had on some occasions described in her own words the treatment she felt she received on a particular day, and on other occasions copied and pasted from emails that had been sent or received by her (and in many cases, emails sent by the claimant to herself). We were informed that this table had been prepared for the purposes of identifying the list of issues, which had been done following the preliminary hearing on 3 October 2022. However, during the course of the hearing the claimant relied heavily on the contents of this document, both in her written witness statement and in her oral evidence. As the Tribunal had identified from reading witness statements prior to oral evidence that the claimant was relying on the contents of that document, the Tribunal sought the respondent's views on whether it accepted the authenticity of its contents. The respondent's position was that they did intend to cross examine the claimant about matters set out in that document and therefore that they were happy for it to be referred to, and accepted that, where the claimant had referred to an email in the document, they would not seek to argue that the email was not a genuine email sent or received on the date quoted in the table.

14. The Tribunal's assessment of the document is that, where emails are quoted, we accept that these were genuine emails which have been copied and pasted across into the table. However, where there is narrative about the treatment received which did not appear within an email, we find that this was prepared some time later, either when she submitted her dignity at work complaint about the treatment she received, or when she prepared for these Tribunal proceedings. We accept that the claimant has sought to remember events to the best of her ability, however we do take into account that some elements of the table were prepared from memory some time after the event in question.

15. During the course of the hearing, certain additional documents were presented to the Tribunal as set out below. Having considered the issues that the documents addressed, and the reasons for their not having been provided earlier, we determined that it was appropriate to add these documents to the Bundle notwithstanding that evidence had already commenced. We ensured that both parties had the opportunity to put forward oral evidence about the documents before determining the claim. The additional documents were:

    a. The claimant's leaver questionnaire: pages 939 to 947;
    b. An email exchange between Melanie Lawson of the respondent's HR team, Leena Vara of the respondent's HR team about travel time: pages 948 to 949;
    c. An email exchange between the claimant and Leena Vara of the respondent's HR team: pages 950 to 952

d. Person specification and job description for the claimant's role: pages 953 to 956
e. Person specification and job description for the role advertised after the claimant's resignation: pages 957 to 960; and
f. Screenshot showing Dr Sabin's contractual status: page 961

16. Both parties called a number of witnesses to give evidence to the Tribunal, as follows:
    a. For the claimant:
        i. The claimant herself;
        ii. Miss Beth Loader;
        iii. Miss Michelle West;
        iv. Mrs Valerie Falconer;
        v. Mrs Michelle Virgo; and
        vi. Ms Laura Boyce

    b. For the respondent:
        i. Dr Natasha Sabin;
        ii. Mr Leon Bonas;
        iii. Mrs Sara Delaney;
        iv. Mrs Dawn Roberts; and
        v. Mr Trevor Brown

17. All of the respondent's witnesses attended the hearing to give evidence in person. In relation to the claimant's witnesses, the claimant and Mrs Falconer attended in person, however the Tribunal agreed that Miss Loader, Miss West, Mrs Virgo and Ms Boyce could all attend by video given that their evidence was short and, in one case, there were ongoing medical issues which made it easier for them to join by video. Mrs Falconer attended the hearing in person.

## Fact-findings

18. The claimant worked for the respondent as an Integrative Therapist, working four days per week, although her precise hours of work changed at various points during her employment. Her employment commenced on 13 January 2014 and ended on 5 October 2020 due to her resignation.

19. The claimant's role involved dealing with complex, sensitive and emotional situations involving young people. Her role involved a mixture of office work and going out into the community.

20. The respondent operated a lone working policy which provided that, for a meeting with an external party to happen on the respondent's premises, there needed to be someone else present in the building.

21. It was usual practice within the respondent for new employees within the team to be recruited initially on a fixed term basis, and then be converted to permanent status if and when funding was received for a permanent position. The claimant was therefore initially recruited on a fixed term basis, eventually being made permanent in April 2018 as explained further in our findings below.

22. An issue was raised in evidence as to whether the claimant's role required that she have, or be working towards, a relevant professional qualification. This is relevant to the claimant's university work, as detailed later in these findings. It was initially argued by the respondent, particularly Dr Sabin, that this was a requirement for the claimant's role, which the claimant denied. During the course of the hearing, the job specification for both the claimant's role, and the claimant's replacement's role once she left, were disclosed to the Tribunal and accepted into evidence. This showed that:

    a. The claimant's own person specification (page 953) did not contain this requirement, and so this was not a requirement for her role and she was suitably qualified for the role she held whether or not she was seeking to obtain a university qualification (although we accept that Dr Sabin and/or Mrs Delaney may not have realised that).

    b. The person specification for the claimant's replacement (page 957) did contain this requirement, so by this point it had become a role requirement. This is irrelevant to the claimant however.

<u>The claimant's team</u>

23. The claimant worked in the Harmful Sexual Behaviour ("**HSB**") team which included around five to seven people at the claimant's level. Some of them were employed directly by the respondent, as was the case with the claimant, and some were third party employees (specifically at the relevant time, Michelle West who was employed through an umbrella company and Beth Loader who was employed by Barnardo's). This is relevant because those who were not directly employed by the respondent would have been subject to different terms and conditions of employment and/or engagement. Each member of the team had their own electronic diary, along with a team diary that they could all put their whereabouts into, and each individual was responsible for running their own diary.

24. The members of the team other than the claimant who are relevant to the claimant's claim are:

    a. Beth Loader, who was employed by Barnardo's and seconded to the respondent's HSB team between 2013 and 2016 and then again between 2017 and 2021. She was employed as an Autism Specialist Worker.

    b. Michelle West, who was engaged through an agency to work for the respondent between January 2019 and January 2020. Her role was a Senior Social Worker in the HSB team.

    c. Valerie Falconer, who was and remains employed by the respondent, as a Female Gender Specific Coordinator, within the Youth Offending Service ("**YOS**") area of the respondent: this was a separate team to the HSB team. She has been employed by the respondent in various roles since 2004, and at the relevant time she reported to Ann Ballantyne. Her role was

different to the claimant's role, but it also involved going out into the community.

d. Michelle Virgo, who was and remains employed by the respondent since May 2003. She is employed as a Female Gender Specific Case Manager and reported to Valerie Falconer.

e. Laura Boyce, who was employed by the respondent from July 1984 to September 2020. At the relevant time she was employed as a Senior Social Worker in the HSB team, and reported to Dr Sabin.

f. Jasmine Trevis, who was employed directly by the respondent at a grade 4 level (whereas the claimant was grade 5).

25. In relation to the management structure within the claimant's team, this changed at various points during the claimant's employment and the relevant managers were as follows:

a. Mr Leon Bonas was the Assistant Head of Service within the HSB team from around September 2016, during which time he managed the overall team in which the claimant worked. He also originally interviewed the claimant although was not managing her team at that point.

b. Mrs Sara Delaney. At the start of the claimant's employment, she was employed as a Team Manager within the HSB team and she managed both the claimant and Dr Sabin. In her witness statement, Mrs Delaney stated that she took on the role of Assistant Head of Service for the YOS team from February 2015 to July 2016 (i.e. the same level as Mr Bonas was from September 2016 but within a different team). She said that from July 2016 to August 2017 she moved to a role as Assistant Head of the Adoption Service. Mrs Delaney's evidence was that she managed the claimant therefore from the start of her employment in 2014 until February 2015, at which point she said that Dr Sabin (see below) took over line management responsibilities. Dr Sabin's evidence was that she became a supervisor in 2016 but that there was a period before that when she was given an "honorarium" which enabled her to take on some additional responsibilities, albeit not as a formal contractual role change. There was a lack of clarity about the position generally in 2015 (see below regarding Dr Sabin's contractual status). In light of the lack of clarity, we are unable to say exactly when Mrs Delaney ceased to be the claimant's line manager.

During the course of 2017 Mrs Delaney stepped down, away from a managerial role, as she approached retirement. This meant that she re-joined the claimant's team but as a peer rather than a manager. When Dr Sabin later went on maternity leave between April 2019 and February 2020, Mrs Delaney again stepped up to manage the team.

c. Dr Natasha Sabin: she commenced employment at the same time as the claimant in 2014 and they worked together on a job share basis at that time. During the course of 2015 Dr Sabin's role changed (see section titled "Dr Sabin's contractual status" below) and from early 2016 at the latest Dr Sabin became the claimant's line manager. She remained the claimant's line manager, other than a period of maternity leave between April 2019 and February 2020.

d. Mr Trevor Brown was the Head of Birmingham Youth Offending Service with oversight for the team, reporting into Dawn Roberts. He was responsible for funding decisions and budgetary matters.

e. Mrs Dawn Roberts was the Assistant Director with overall responsibility for the wider team.

f. Ms Helen Taylor of the respondent acted as supervisor to the claimant in respect of her university placement.

26. Within the claimant's team, all colleagues were white with the exception of Mr Brown, who is black. Within the separate YOS team, Mrs Falconer is also black.

27. During the relevant period, the Tribunal finds that Mr Bonas, Dr Sabin and Mrs Delaney were friends as well as professional colleagues. This is relevant to note as we also find that this affected the professional and team dynamic due to a perception within the wider team that they were a "clique" (as referred to in more detail below): this impact was felt not only by the claimant but also by other members of the team.

28. Since the events which are the subject matter of this claim, both Mrs Roberts and Mr Brown have taken on positions at Halford Drive Community Sports Hub. To the extent that this was raised in order to suggest that Mrs Roberts and Mr Brown are friends and that therefore their evidence may be less valuable, we find that they worked in a small field of expertise and it is not surprising or unusual that two colleagues have moved onto the same subsequent endeavour. We do not find that this in any way affected their relationship or the cogency of their evidence to the Tribunal.

29. It is also worth noting that Dr Sabin had come across the claimant prior to their employment at the respondent, as they were on the same course at Birmingham University. The claimant left that course and Dr Sabin believed that she had been removed from it due to making attempts to organise her own placement outside of the agreed protocol. The claimant was not questioned about this and we make no finding about what did or did not happen on the university course, however we do find it relevant in that we think that Dr Sabin's perception of what happened affected her overall view of the claimant from the outset of their employment.

<u>Dr Sabin's contractual status</u>

30. As outlined above, Dr Sabin was originally employed on a job share basis with the claimant. At some point, the exact date of which is unknown and

could not be recalled by the parties (in part due to Dr Sabin having an initial period of "honorarium" where she was given certain additional duties unofficially), Dr Sabin was promoted to team manager: Dr Sabin said she thought this was in February 2016.

31. The claimant asserted that Dr Sabin had in fact been made permanent in April 2015, whereas she had not been, despite them both having been employed as a job share. This is something that she made Dr Sabin aware of on 29 March 2017 (page 95) although Dr Sabin did not respond to that or take any steps to verify it.

32. In her oral evidence, Dr Sabin said that she thought she became a clinical supervisor in 2016 but could not quite recall the timeline between 2014 and 2016. The claimant also asserted that Dr Sabin had become clinical supervisor in 2016 (and so in 2015 remained on the job share with her). Dr Sabin said that she did not recall being given a permanent contract in 2015. She said that, if a contract was to be made permanent, it would be advertised if it was a new or different job, but not if it was simply a fixed term employee becoming permanent.

33. During the course of the hearing, on 14 July 2023, the respondent carried out a search and located an HR record (page 961) which clearly showed that Dr Sabin's contractual status was changed to permanent in April 2015.

34. Mrs Roberts' evidence was that she was very surprised to learn that Dr Sabin has been made permanent when the claimant had not been. She said that each position in the trust would have a position number and that HR would not have been able to make that decision, it would have been decided through finance who would need to establish a route for permanency which Mr Brown would have been involved with. She said that she thought this was an HR recording issue.

35. Mr Brown's evidence was that he did not believe that a decision was made to made Dr Sabin permanent but not the claimant in 2015. He said that it would have been a decision that would have fallen to him to make (after discussions with finance), and he did not make it. He said he believes it to be an admin error on the system which he only became aware of at the hearing this week. He believed that she would have been permanent when she moved to the team manager role within the HSB team.

36. We find that it is clear that, despite both Dr Sabin and the claimant saying that Dr Sabin was officially promoted in 2016, she was in fact made permanent in April 2015 and the claimant was not. At this point, both Dr Sabin and the claimant's evidence was that she remained in a job share (although we note that Mrs Delaney's evidence suggested that Dr Sabin may have stepped up in February 2015, based on the evidence of other witnesses we find that if that happened it was on an unofficial "honorarium" basis). For contractual purposes at least they were still in a job share in April 2015.

37. We agree with Mrs Roberts and Mr Brown that this should not have happened: it was not appropriate for one half of the job share to be made

permanent, and not the other, with no process being followed. We cannot say for certain what happened, because HR were not present to give evidence and this happened so long ago that no one may recall. It is theoretically possible that it was done deliberately and kept quiet, however on balance we accept Mrs Roberts' and Mr Brown's suggestion that this was an error, and that neither of them approved this change being made. This is supported by the fact that Dr Sabin seemed to be genuinely unaware that she was made permanent at that stage, and by the fact that finance would have been involved in any decision and would no doubt have queried why only one half of a job share was being made permanent. Mrs Delaney also explained in evidence that she had once been accidentally recorded by HR as being an Area Cleaning Supervisor: whilst irrelevant, it does demonstrate that errors can be made by HR. In addition, there is still an end date (of 2017) on the screenshot showing change in contractual status which does not align to this being permanent (despite it stating permanence), and therefore on the balance of probabilities we find that HR accidentally clicked a button that should not have been clicked to record this change in status.

38. What is also worth noting however is that the claimant became aware of this in 2017 and it is entirely understandable that this would have upset her, especially given at that time her own contractual status was still being decided. The claimant also raised this with Dr Sabin in March 2017 as set out in further detail below and this was ignored, which is unfortunate and we can see why it led to the claimant feeling mistreated.

<u>The initial period of the claimant's employment</u>

39. Mrs Delaney had no concerns about the claimant's performance during the initial period between January and September 2014. The claimant was supported to settle into her role and to the extent that her workload was reduced, this was normal practice for a new employee.

40. Mrs Delaney was off sick from September 2014 until January 2015 and therefore we are unable to comment on the claimant's performance during that time, however Mrs Delaney confirmed that on her return from sick leave the claimant appeared to be well liked and working well.

41. Dr Sabin on the other hand gave evidence that, from the point at which she became the claimant's line manager she had concerns about the claimant's timekeeping and she referred to certain specific examples (for example, when a young person had been kept waiting for the claimant): when questioned it became clear however that these all occurred after she started as clinical supervisor. We find that there was no evidence to support Dr Sabin's perception from the outset of her becoming clinical supervisor that the claimant had timekeeping issues, and that Dr Sabin generally had a negative perception of the claimant from the outset of her period managing her (which we think may have stemmed from her perception of the claimant on her university course).

<u>The November 2016 timekeeping issue</u>

42. On 15 November 2016 an issue arose as to the claimant's start time. The claimant (and all staff) were required to sign into the building when they arrived, and further log their time on an internal system called Borer (we address the Borer system further below).

43. Dr Sabin says that she saw the claimant arrive at 10am but that the claimant signed in as at 9.45am. This was then reported to Mr Bonas by email from Dr Sabin (page 474), in which Dr Sabin said that when challenged the claimant said that she did arrive at 9.45am but had to spend time checking her time sheet. Dr Sabin said that she needed to discuss this with the claimant formally with Mr Bonas present as it had been an ongoing issue for some time.

44. The claimant said in her witness evidence that she would take a timesheet from the front desk which she would copy into her diary. In evidence she said she would copy this at the front of reception. We find that what the claimant meant was that she would stand to the side at reception and copy across the information. However, Dr Sabin said in evidence that she saw the claimant enter the building at 10am which would not align to the claimant's explanation. We find that it would not have taken 15 minutes for the claimant to check her time sheets in any case, that Dr Sabin would not have expected it to take 15 minutes, and that Dr Sabin did see the claimant arrive at 10am. We find that it was reasonable for her to want to discuss that with the claimant. We also find that by this point timekeeping had become a genuine ongoing issue, and it was reasonable for her to seek Mr Bonas' support given she was still a new manager herself at this stage.

45. However, we have also considered why Dr Sabin chose to check what time the claimant signed in. The fact that she chose to check this demonstrates that she had a lack of trust in the claimant at this stage, as it would not be necessary to check an employee's sign in time unless they were suspected of not signing in at the correct time. We accept that by this point there were ongoing timekeeping issues and it was therefore understandable for her to check the records.

46. There are no records of the requested formal meeting, which is surprising. The fact that this issue had been raised also appeared to have come as a surprise to the claimant when she received the email in her subject access request, and therefore we find that if there was a three way meeting it was informal and did not resonate with the claimant that there was a real issue. This is in fact a regular theme in this case, where we find that things were not always spelled out to the claimant clearly and so she remained unaware of the severity of certain matters.

<u>Working hours and fixed term status – 2016 to 2017</u>

47. In December 2016 there were some discussions about the claimant's working hours, and whether her hours could be increased to full time (see for examples emails at pages 477 and 484). The finance department informed Mr Bonas that, in order to increase the claimant's hours to full time, a corresponding saving would need to be found elsewhere. It was for

Mr Brown as Head of Service to make decisions on increases to hours, in conjunction with the finance team (not Mr Bonas or Dr Sabin).

48. Subsequently, in January 2017 it came to light that another employee had reduced their hours by 7.5 hours and Mr Bonas requested that those hours be transferred to the claimant (page 486). Eventually it was agreed that the claimant's hours could be increased to 29.25 hours from 1 June 2017 (page 522). This was only a small increase but the effort that the respondent put into trying to secure what hours they could demonstrated a commitment to supporting the claimant on this matter, and we would note that the claimant had no entitlement to increase her hours under her contract of employment. That said, the process took around 6 months and whilst we find that was not unreasonable in the circumstances, we see no evidence of the claimant being kept updated on progress and we think communication with the claimant could have been clearer so that she knew that efforts were being made on her behalf.

49. On 18 January 2017, the respondent's HR team emailed Mr Brown asking about the claimant's employment status and whether she was still on a fixed term contract or not as their records showed the contract end date to be 31 March 2015. This information was requested because of an ongoing TUPE transfer process to ensure records were accurate. HR then chased again for this information on 13 February 2017 and 10 March 2017 (so a period of almost two months with no response), and Mr Brown then emailed Mr Bonas to check the position on 10 March 2017, stating "*I'm assuming this is an error and Gurpreeti is on a permanent contract…?*". The original request had come into Mr Brown because the HR records erroneously showed Mr Brown as being the claimant's line manager (another example of poor recording on the HR systems). The fact that the HR record showed an end date of March 2015 supports our finding that Dr Sabin's permanent status was granted in error as, if it was a conscious decision to differentiate, we find that the claimant's contract end date would have been updated at the same time.

50. On 16 March 2017, having still not received a response from the team, HR emailed Mr Bonas to urgently request confirmation of the claimant's contractual status (page 499) and Mr Bonas contacted Mr Brown the following day to ask if they could make her contract permanent or whether to issue another fixed term (page 501): this shows that it was not Mr Bonas' decision to make. On the face of it however it does seem odd that Mr Bonas' response did not reference the separate email from Mr Brown on 10 March 2017 which had said that he assumed she was permanent: we therefore assume that there had been a separate conversation between the two of them about the matter, with the outcome being that Mr Brown would investigate further whether she could be made permanent.

51. Mr Brown confirmed to Mr Bonas that it would remain fixed term, but with a new end dated of 31 March 2018, which was then confirmed to HR (page 504). We accept that this would have been due to lack of funding for a permanent role at that time, and we find that to have been a valid consideration.

52. On 29 March 2017, the claimant emailed Dr Sabin (page 95), explaining that HR had told her that her contract was not up to date and did not have an end date of it, and had also told her that Dr Sabin was made permanent in 2015. She said "*definitely sure you did not know this!!*" and she asked Dr Sabin and Mr Bonas to look into it for her. At this point the claimant clearly assumed there was some kind of HR error going on, however it also reveals that no one had involved the claimant in the separate discussions between Mr Bonas/Mr Brown and HR.

53. It does not appear that Dr Sabin took any action to find out more about the contractual discrepancy between her own and the claimant's contracts or to respond to the claimant, despite the claimant having (reasonably) requested this. This is unfortunate as it would have provided the respondent with an opportunity to reassure the claimant that this was simply due to an error and was not differential treatment and could have cleared up a key area of confusion in this claim. We do find however that for some reason Dr Sabin did not register what the claimant was saying about her own contractual status, as we accepted that Dr Sabin was genuinely surprised to learn during the hearing that she was made permanent in April 2015.

54. The other relevance of the claimant's contractual status in March 2017 was that the claimant was about to start a university course (see more detail below) which required her to undertake a two year work placement. The proposal was for her role at the respondent to be treated as that placement, but this would require the respondent to confirm to the university that she would remain at the respondent for two years (and not only until 31 March 2017 as per her updated end date). Mr Bonas emailed Mr Brown to request that the respondent support this on 29 March 2017 (page 505) and Mr Brown confirmed the following day (page 508) that the two years could be agreed to (although we do not know whether this was ever notified to HR). This shows that the respondent genuinely did wish to assist the claimant to progress her career.

55. Surprisingly, on 18 August 2017 a Business Analyst within the respondent emailed Dr Sabin (page 535) saying that the claimant's contract was showing on their systems as ending on 31 March 2015, and asking for an update. This was again linked to the TUPE process. This means that the updated end date of 31 March 2018 appears not to have been recorded correctly in the HR system (another example of HR system error).

56. On 3 October 2017 HR emailed Dr Sabin about the matter again, saying that the claimant had appeared on a report as being on a fixed term ending on 31 March 2015, and asking for an update on her employment status. Similarly in an email from HR to the claimant on 30 October 2017 (page 110), it was explained to the claimant that she was still on her original contract which had not been extended since. Again, this shows that despite the issue being raised multiple times by now, the HR systems had still not been updated for some reason. It also appears that no update or explanation was sent to the claimant about her contractual status.

57. We would also note that, in respect of all of the contractual changes which were referred to during the hearing, we were not presented with any formal

contractual change documentation which was issued to the employee in question.

Incident on 7 March 2017

58. On 7 March 2017 the claimant had a "heated debate" with a member of staff at a particular children's home. Dr Sabin emailed Mr Bonas about it (page 494) and in that email she referenced that there was a young person at that home who was unhappy with the team and who had made verbal complaints about Dr Sabin, the claimant and two other individuals. She said that the claimant was emotional and had suggested that all calls regarding that young person be passed to her for the time being, but warning Mr Bonas that they were also unhappy with Dr Sabin so might not wish to do that.

59. In her witness statement Dr Sabin said that the claimant was shouting on the call and behaving in an "entirely inappropriate" way. However, whilst the contemporaneous email about the matter references the claimant being emotional and heated, the general impression given is not that this was the claimant's fault, but rather that there was a wider issue with the individual having complained about a number of members of the team. The tone of the email suggests that this was in fact at that time being treated more as a wellbeing matter to make sure that the team were supported in the face of this hostility from a third party and also to warn Mr Bonas in case a formal complaint about the team was received. We find that this is not an example of the claimant behaving inappropriately, but that the respondent is now seeking to utilise this event to paint a picture of the claimant being inappropriate at work. We would also note that there is nothing to suggest that any action was taken at the time in relation to the claimant so even if it was felt that her behaviour was inappropriate, she would not have known that.

The claimant's university course

60. The claimant enrolled onto the Cardiff Metropolitan Diploma in Forensic Psychology in April 2017. This was a self funded course (not funded by the respondent) and it required her to complete a work placement. The respondent agreed, as outlined above in relation to the duration of her fixed term contract, that she could use her role at the respondent as her placement. This was not normal practice, and shows the support the respondent gave to her to progress her career. Helen Taylor at the respondent provided internal supervision during the placement.

61. One issue that was discussed in evidence was whether this course was linked to the claimant's underlying role. We find that:

    a. Given that the claimant's job description did not require her to be working towards a relevant qualification, the course was not a requirement of her role, and therefore any issues relating solely to the university course would not be relevant to the respondent; however

b. As her role was being used as her placement, any concerns about her performance at work would have a negative impact on her performance in her placement, and so they were linked in that sense. Therefore, it would have been appropriate for any issues in relation to the claimant's work at the respondent to have been flagged to the university.

62. By August 2017, there were concerns about the claimant's performance, particularly timekeeping, on the course, and on 2 August 2017 there was an internal email within the university between Karen De Claire and Lucy Brisbane to discuss potentially suspending her from the course. A further email was sent about this from Lucy Brisbane to Dr Sabin on 7 August 2017 (page 534).

63. The claimant was originally supervised on her course from within the university by Lucy Brisbane. Lucy Brisbane was pregnant and therefore there was an expectation that she would need to hand this role over when she went on maternity leave, however she handed it over early to a more senior colleague, Karen De Claire in the summer of 2017. We saw no written evidence about this and the claimant did not appear to be aware that the role had been handed over earlier than it should have been, however we accept that the university did move the claimant's supervision to Karen De Claire because of a genuine perception that there were difficulties regarding the claimant's performance. Having said that, we also find that the university's knowledge of those difficulties may well have come from the respondent sharing its view of the claimant to it.

<u>The WWII unexploded bomb day and CareDirector issues: 16 May 2017</u>

64. On 16 May 2017 an unexploded WWII bomb was found in Birmingham, which caused traffic issues. We find that everyone had traffic issues of some sort, but in the claimant's team the claimant was the only one who did not make it to work in the morning (everyone else arrived late but arrived). We do not know exactly where the bomb was found in comparison to the claimant's home address and we accept that the impact of it may have been slightly different for each team member according to where they lived, however there was a perception that the claimant "gave up" attempting to come to work too quickly. We would have expected the claimant to have contacted her manager to ask permission to give up before doing so.

65. A team training event had been arranged for that afternoon. The claimant emailed Dr Sabin at lunchtime and said "*I just checked with admin and she stated the traffic outside and around is still quite bad, so I don't think I am going to attempt to come for training as I do not want to get stuck in my car again. Just letting you know*" (page 511). We find the tone of this email to be inappropriate on the claimant's part: the claimant should have sought permission and not just assumed that this was acceptable, especially as this was a pre-arranged training session and not just an ordinary afternoon in the office.

66. Dr Sabin forwarded the email to Mr Bonas (page 511), explaining that she had replied to ask the claimant to attend the training (which in our view was an appropriate thing for her to ask the claimant to do). The claimant did so,

and managed to get into the office for it (which shows that the claimant's worries were unfounded). The fact that Dr Sabin forwarded this email to Mr Bonas suggests in our view that they have had other conversations about the claimant's attendance and/or timekeeping.

67. Although the claimant attended the training, she forgot her laptop and therefore had to go home again after the training to continue working from there. This may have been genuine, but we can understand that this would have been frustrating for Dr Sabin in the context of the discussions they had had earlier that day about her attending the office.

68. The following day, 17 May 2017, Dr Sabin emailed Mr Bonas, saying that she had just had a conversation with the claimant about the previous day (page 516). The claimant had told Dr Sabin that she worked from home the entire time she was not travelling or in training, including inputting entries on a system called CareDirector. Dr Sabin had checked the audit tool for the young people on her caseload and none were accessed on that day.

69. Mr Bonas emailed Melanie Lawson in the HR department on the same day (page 515) asking about informal/formal thresholds for capability, saying that they had had a number of conversations with the claimant and that he felt that at least an informal process should be put in place.

70. Also on the same day, Dr Sabin emailed the claimant to ask her about the accounts she had accessed on CareDirector, to verify whether the claimant had or not (pages 512 to 514).There was then an email exchange between them, during which the claimant provided some information about tasks she had been doing during that time and, when pushed again about the names of those people she said she accessed, asserted that she did not in fact have access to CareDirector in the afternoon so kept those records back to load on another occasion.

71. We find that it was reasonable for Dr Sabin to ask the claimant what work she had done from home in the circumstances. Once the claimant replied, Dr Sabin checked the information provided. We find this to be an indication of a lack of trust on Dr Sabin's part: we do not believe that every employee would have been checked up on to this extent when working from home. However, we also find that, when the records on CareDirector did not match what the claimant had said, it was reasonable to investigate this further. It seems strange that, if CareDirector was not working as the claimant said, she had not explained this at the outset. We find that it was reasonable for Dr Sabin to feel that she was not getting the full picture from the claimant.

72. Dr Sabin took HR advice (page 523) and was advised to treat the matter as misconduct. She therefore held an informal meeting with the claimant on 25 May 2017 (page 527). The outcome of this meeting was that the claimant agreed to use 1.5 hours of time off in lieu ("TOIL") for that day. The matter was not addressed formally but the claimant was told that if there were further concerns then it could move to a formal route (page 525).

73. Mrs Falconer gave evidence that the claimant had been upset by what happened that day as she had not been believed about her attempts to make her journey to work and had had to attend an informal meeting,

however Mrs Falconer confirmed in evidence that she had not been aware of the CareDirector issue. Therefore, we find that Mrs Falconer did not have the full picture because she was under the mistaken impression that the issue was the claimant failing to get into work in the morning, when in fact the informal meeting was about the claimant having to be asked to attend the training and whether the claimant had done the work she said she had done at home.

74. We find that, if the claimant had worked her full contractual hours on 16 May 2017, she would not have agreed to use TOIL and so we believe she knew that she had not been as productive as she should have been.

75. The claimant says that she was told by Mr Bonas to "choose her battles wisely" on 25 May 2017. He denies saying that. We have found ourselves unable to make a determination on whether it was said or not. However, we find that, if this was said, it was in the context that he felt she hadn't been working her correct contractual hours that day and that taking TOIL would be preferable to allowing the matter to run through to a disciplinary hearing. This would be reasonable advice for him to give and is not threatening.

CASS role: 12 September 2017

76. In September 2017 an opportunity arose within the Children's Advice and Support Service ("CASS"). This was not a vacancy for a new member of staff, but rather a role which someone could undertake alongside their existing substantive role.

77. On 12 September 2017 the claimant told Dr Sabin that she was interested in this position. Dr Sabin emailed Mr Bonas about it (page 537) saying "*Ha, just had Gurpretti tell me she is interested in role so I told her not to bother she has enough to do and its too complex for her to get into right now with uni and shb work!!!!! Didn't even bother saying she would need to be qualified*."

78. It is relevant to note that, by this point, Mrs Delaney had taken a step down as she moved towards retirement and was no longer senior to the claimant, but a peer, with Mr Bonas being her own line manager's line manager. We find that the tone of the email was wholly inappropriate at any time, but this is particularly so in light of this fact.

79. Mrs Delaney accepted that the email reflected frustration on her part and said that this was because she thought that extra work would come her way if the claimant took on this additional role (which she did not think the claimant had time for on top of her university work and normal duties, which Mrs Delaney thought she was struggling to keep on top of already). Mrs Delaney said that at this point in time she was struggling with the transition back to her new role and this influenced her communication.

80. We find that the email shows the relationship that Mrs Delaney had with Mr Bonas, that she felt able to write to him in those terms. It also shows in our view that there had been offline conversations about the claimant's performance as she has assumed Mr Bonas will understand the meaning of her message without giving context.

81. We find that the tone of the email was mocking the claimant. Whilst we accept Mrs Delaney's evidence that this was a difficult period for her more generally, we find that using "ha" for example is more than just expressing frustration, that is targeted criticism. We think that, in Mrs Delaney's email this was not a work email, but someone moaning to a friend.

82. No action was taken against Mrs Delaney for having sent this email, although Mr Bonas did not reply to it which we find shows that he knew it was inappropriate. Mr Bonas said that he did have a wellbeing chat with Mrs Delaney around that time, which we accept, however we find that he should have specifically instructed her that this kind of email was inappropriate. We find that he took it as an email to a friend and therefore did not act on it.

Request to undertake private work – 17 October 2017

83. On 17 October 2017 the claimant had an email exchange with Dr Sabin about some training that had been requested by a school (page 540). Dr Sabin said that it would be difficult to do, and the claimant asked whether she could undertake the work privately instead. Dr Sabin forwarded the claimant's email to Mr Bonas one minute later, simply stating "*!!!!!!!*" (page 539). Mr Bonas replied saying *"If capacity to undertake privately and able to – she can do as part of working week*".

84. We find that the nature of Dr Sabin's email shows that she felt that the claimant's request was highly inappropriate and that no explanation of why was needed for Mr Bonas. On the other hand, Mr Bonas' reply suggests that the request was not in fact inappropriate and that there was a possibility this could be done.

85. In evidence Dr Sabin said she was concerned that this would be a conflict of interest for the claimant. We find that unconvincing, not least because there is a set process for addressing conflicts of interest within the respondent through completion of a form, but rather that this reflects a frustration that the claimant was, in her view, struggling with her current workload but still taking on more. We also find that the lack of explanation from Dr Sabin suggests that she and Mr Bonas had had previous discussions on this topic. The fact that the claimant was offering to take more on (both here and on 12 September) shows in our view that the claimant had not appreciated the level of concern that the respondent had about her work.

"Got there in the end" email – 18 October 2017

86. On 18 October 2017 feedback was received from the Youth Offending Court Officer (page 543) that a particular report that the claimant had prepared was "*extremely detailed and very helpful"*. Dr Sabin forwarded this feedback to Mr Bonas on the same day (page 543) with the comment *"We got there in the end! Good feedback for Gurpretti*".

87. There was a dispute between the parties about the meeting of "we got there in the end". The respondent's position is that this was positive feedback about the claimant's work and had been forwarded to Mr Bonas so that he

could see the praise she had received, and that the reference to "got there in the end" could have been a reference to the child in question and the work it had taken to support that young person. The claimant however argues that the words "got there in the end" represent a slight about her and are evidence of the Dr Sabin and Mr Bonas having had other discussions about her.

88. There are two possible explanations: the wording could indicate that the particular young person in question had presented a challenge for the respondent and it had taken a lot of work to achieve that outcome. Alternatively it could indicate that the quality of the claimant's work had initially been poor, but after a lot of input it had been turned around through support from Dr Sabin in the "gatekeeping" process (this is an internal process whereby reports are reviewed before being sent out).

89. We find that the reference to good feedback was genuine and Dr Sabin did not seek to take any credit for turning it around in gatekeeping. This was a reasonable and positive email regarding the claimant and even if the meaning was intended to refer to the level of support the claimant needed, the overall message was that the claimant did a good job in the end. By the time the claimant saw it (through her DSAR), the relationship had soured and she saw other emails which offended her and we find that in this context she has misinterpreted the meaning of this email.

Expenses email - 8 November 2017

90. On 8 November 2017 the claimant sent an email to Dr Sabin seeking reimbursement of £4 expenses. Dr Sabin forwarded the email to Mr Bonas, saying *"£4!! I'll give her that out of my purse!!*"

91. It is clear from the tone of the email that Dr Sabin thought it was inappropriate for the claimant to ask for a reimbursement of such a small sum. In evidence she said that the process for claiming expenses was difficult as you were supposed to use a purchase card, and that this was what caused the frustration, however she accepted that she should not have reacted as she did and should not have conveyed an expectation for the claimant to cover her own expenses. The claimant said that she thought she could get in trouble if she did not claim it back as the particular expense could have been viewed as her making a gift to the young person (it being colouring books and a diary for the young person).

92. We find that the tone of this email was inappropriate and again comes across as a friend venting to another friend, rather than one manager emailing their own manager about a team member. The email is revealing in terms of the perception she clearly had of the claimant by this point and her negative attitude towards her, and we find that she would not have reacted the same way had a more respected colleague made the request.

Travel time – 9 November 2017

93. In November 2017 an issue arose about whether employees could claim their travel time to and from their first and last appointments of the day. The

claimant says that she was not allowed to but others were, and that her honesty was questioned unfairly about this.

94. We heard evidence from some of the claimant's colleagues about whether they claimed their travel time, as follows:

    a. Beth Loader said that Barnados had a different policy to the respondent, and she was permitted to claim her travel time (so in effect accepting that at the respondent this was not permitted);

    b. Laura Boyce said that she used to claim her travel time, but that once the issue was raised by the claimant they all had to change their working practices. Ms Boyce lived further away from the office than the claimant did and would sometimes go home and write up her notes after a meeting, rather than coming back to the office and then having a long commute home again. She did however say in evidence that she would start work earlier if she was travelling at the start of her working day so that she did some work before leaving home;

    c. Michelle Virgo said that she would calculate the time it would have taken to travel from home to the office, and would take that away from her time spent travelling to the appointment (so, for example, if the appointment was an hour away and she lived 30 minutes from the office, she would take 30 minutes travel as being within the working day).

95. Therefore, whilst the claimant asserts that everyone else was claiming travel time, the position is not quite so straightforward. It appears there was a complete lack of consistency across the team in what was happening, however no one employed by the respondent said that they claimed all of their travel time in its entirety, as the claimant sought to do. They either discounted it or accounted for whatever their commute time would be.

96. The issue arose because, on 6 November 2017, the claimant attended a meeting in the morning and attempted to claim the time spent travelling from home to the meeting as part of her contractual working hours.

97. After this was raised with her the claimant contacted HR to check the position. The claimant then emailed Dr Sabin on 14 November 2017, passing on the advice she said she had received from Leena Vara in the HR team. She said that Ms Vara had confirmed to her that the travel time could be included in her working hours (page 546).

98. Dr Sabin had been given different advice from another member of the HR team (Mel) and so contacted Mr Bonas on the same day (page 545) to ask to discuss this further. Mr Bonas contacted Mel directly and flagged that there were also timekeeping issues with the claimant more generally. He raised a concern that he felt the claimant was "*splitting heirs*" where she felt time was owing to here, but was not applying the same principle in return where she might finish before her working hours. He referenced the eroding of trust.

99. Mel sent an email to Ms Vara on 16 November 2017 to check what advice had been given to the claimant. There was no copy of the response in the bundle, however during the course of the hearing this was produced (page 950). This in fact showed that Ms Vara had advised the claimant that travel time was not paid for (i.e. the advice that the claimant received was the opposite of what she told Dr Sabin). From reading this exchange it appears that what had happened is that Ms Vara did not initially know the answer and agreed to look into it further. We cannot see the date or time of the final advice from Ms Vara, but we can see that on 13 November (page 951) the claimant knew that it was being looked into by Ms Vara. Therefore, by the time of the claimant's email to Dr Sabin on 14 November either she had the full advice and portrayed a different position, or was still awaiting the full advice but nevertheless chose to portray her comment as being the final position.

100. We make no finding as to what is the correct legal position about travel time as it is not necessary for the purposes of this claim. What is important is that the information the claimant received was not the same as the information she passed on.

101. We find that, when she raised the initial question, there was a lack of clarity about the matter and therefore it was entirely proper for the claimant to have contacted HR to seek guidance. We also agree with the claimant that her honesty was being questioned by Dr Sabin and Mr Bonas. We find it interesting that, once the issue came to light, their immediate assumption was one of dishonesty, rather than thinking that the claimant might have misunderstood and we find that this again reveals the perception they had of the claimant. That said, the conclusion that Dr Sabin jumped to was right: there is a clear lack of trust on Dr Sabin's part, but equally that lack of trust appears to have been justified (as was the case with the CareDirector checks referenced above).

Traffic Issues – 15 December 2017

102. On 15 December 2017 the claimant contacted Mr Bonas about traffic issues she was having. She emailed various people, copying Dr Sabin, saying that she had tried to get in for 2.5 hours but was now working from home until the traffic died down. On 18 December 2017 Dr Sabin emailed Mr Bonas to check if that had been agreed, and he replied on 19 December 2017 saying that he had advised her to re-arrange with Dr Sabin how to make up the hours. Mr Bonas said that other people had managed to travel in from similar areas that day and he felt 2.5 hours was unlikely. He ended his email with *"It all boils down to trust*".

103. This again shows that Dr Sabin is checking up on the claimant but again we find this to be reasonable in the circumstances where she clearly had not been around on the day and there was nothing in the email to say what had been agreed about her working hours that day. Mr Bonas' last line is again telling of his perception of the claimant by that point.

Informal performance management - February 2018

104. By this point, Dr Sabin had ongoing concerns about the claimant's performance and wanted to address this with her. She was particularly concerned about there being delays in the reports the claimant was writing and the claimant's ability to adapt to changing deadlines (from the court).

105. On 15 February 2018 the claimant and Dr Sabin met and Dr Sabin provided her with a table of overdue reports. This was done during a supervision, and the claimant says that she did not appreciate that this was intended to amount to informal performance management. The policy itself does not have set requirements for the informal stage of performance management (page 427): it simply sets out that the formal process is to be used once all informal avenues have been exhausted.

106. We accept that on 15 February 2018 it was not made explicitly clear to the claimant that she was being presented with this table as part of informal performance management under the respondent's capability procedure, as opposed to ordinary supervision and guidance. However, on 12 March 2018 Dr Sabin sent the claimant a long email (page 139) setting out positive aspects of the claimant's work and areas for development. In this email she said "*As I mentioned in our last supervision, this process is informal and you are not part of any formal process at present*". She was sent a link to the capability procedure (page 427). Therefore, by her previous supervision at the latest (7 March 2018) she had been told that this was part of the informal performance procedure.

107. The claimant was taken aback by being placed into this process: we find that this was for two reasons. Firstly she had not appreciated that her performance was of concern (particularly as she had not understood the severity of the problem at the meeting on 15 February 2018). Secondly, it appears that the claimant did not understand that delays in completing work (even if the work itself was of satisfactory quality) could amount to a performance issue. We find that it could, that there was a genuine concern about the time taken by the claimant to complete her reports, and that there was nothing inappropriate about the respondent starting informal performance management at this point to address that with her. In fact, the table approach shows that Dr Sabin had put time and effort into making sure that everyone could be clear on what the expectations were.

108. During the hearing we sought to ascertain how long the informal performance management went on for, as there was no documentary evidence to show that it either moved to the formal process, or ended. Dr Sabin said that the informal process continued until she went on maternity leave in April 2019 and it appears that nothing was actively done at any point to move forward and/or "end" the process. Whilst we accept Dr Sabin's evidence that she was seeking to avoid using the formal process, which is a valid objective to have, the end result was that the claimant was left unclear about how significant her shortcomings were. There appears to have been a lack of clear communication during 2018 and a lack of frank, honest and documented conversations about performance. The concerns were genuine, but equally the claimant did not fully understand them because it was not explained clearly to her.

<u>Claimant raising concerns with Mrs Falconer – February 2018</u>

109. Also around 15 February 2018 the claimant raised concerns about how she was feeling at work with Mrs Falconer. Mrs Falconer formed the view that the claimant's treatment was related to her ethnicity, because it seemed clear to her that the claimant was being treated differently to her (Caucasian) colleagues. Whilst Mrs Falconer was giving her honest opinion based on what she was told, we noted during the hearing that Mrs Falconer had not always been given the full picture of what was happening (for example, in relation to CareDirector, she was under the impression that the action taken against the claimant had been about not believing that it took as long as it did to get to work, which was not what the core issue actually was).

110. The claimant wrote about her discussions with Mrs Falconer in the table she prepared for this hearing (page 125). Whilst she referenced clearly that she had raised her concerns with her, she did not mention race in this narrative.

111. One of the issues in this case is that the claimant alleges she did a protected act by disclosing information to Mr Brown on 15 February 2018. For the avoidance of doubt, we find that the conversation which took place on 15 February 2018 was between the claimant and Mrs Falconer, and there was no separate conversation with Mr Brown on that date.

Claimant's contractual status – March 2018

112. On 1 March 2018 HR emailed Mr Bonas about the claimant's fixed term status, explaining that the claimant was enquiring about her employment status and now had four years service. The email highlighted the urgency of the matter and lack of a response from Dr Sabin on the topic previously (page 920). Mr Bonas responded to say he would need to clarify funding and service re-design issues before confirming.

113. Mr Bonas then contacted Mrs Roberts, Mr Brown and Dr Sabin about the matter (page 919). He referenced performance concerns, university concerns and commented *"My view is that if we could release her I would – as I think Natasha has done all she can to support. I think this is about ability and I would be reluctant for her to secure full employment rights"*. In the email he also incorrectly said that her contract finished in 2015 and that she would have employment rights from November that year, when in reality her contract had been extended the year before and she already had employment rights due to her length of service. The fact he is referring to 2015 suggests that he has completely forgotten the discussions the previous year about her contract extension.

114. The decision as to whether to make the claimant's role permanent was for Mr Brown to make, and not Mr Bonas. However, in writing that email he was clearly trying to influence that decision and it is further clear that he wanted her to leave the organisation. In the Tribunal's view, he was is looking to avoid the hassle of the team having to deal with their ongoing concerns about the claimant. This goes further than simply considering funding for the post.

115. On 27 March 2018 the claimant chased Dr Sabin for an update on her contract (page 152). In the end, Mr Brown did confirm that the claimant's role would be made permanent. We find that this was because funding was available, and also note that in reality the claimant would have had employment rights anyway by this stage due to her length of service. This was confirmed by Mr Bonas to HR on 5 April 2018 (page 563).

Raising concerns with Mr Brown – 12/13 March 2018

116. On either 12 or 13 March 2018, the claimant had a verbal discussion with Mr Brown about her treatment at work. There are no notes of this conversation and Mr Brown did not report the concerns raised by the claimant to his manager, Mrs Roberts.

117. Mr Brown recalled discussing with the claimant that the claimant felt that she was being treated unfairly. He denied that there was any reference to race made by the claimant and said that the claimant did not compare her treatment to how others were treated, but rather focussed on specific actions taken relating to her that she disagreed with. The claimant says that she made an allegation of race discrimination. However, in the table that the claimant prepared for the purposes of identifying the issues in this claim, where she refers to this discussion (page 137) she makes no reference to race.

118. The claimant followed the discussion up with an email to Mr Brown on 13 March 2018 (page 562). In this email the claimant refers to being anxious about her upcoming supervision and says that performance concerns had not been raised with her prior to the events of the previous week. She did not mention race.

119. Having considered the points raised by both parties, we find that Mr Brown would have remembered if the claimant had referenced race, and we find him to be honest when he says that she did not. We also accept Mr Brown's evidence that, as a black person himself, he is alive to issues of race discrimination and would not have ignored this if it were raised with him. We find that the discussion with Mr Brown was not about race, but more general in nature about the claimant not understanding or accepting why she was being put through the informal performance process.

120. The claimant also says that, once she raised matters with Mr Brown, everything stopped. We do not agree that this is the case, given the point above about the informal process continuing indefinitely through 2018: we instead find that, because there was no agreed "end date" or "review date" the claimant assumed that it had stopped, and Dr Sabin assumed it was ongoing because no one said anything to the contrary.

Dr Sabin wedding

121. On 5 May 2018 the claimant attended Dr Sabin's wedding at her family home. Dr Sabin referenced this because this was two weeks before the claimant sent herself an email saying she felt unsafe in supervision with the claimant. However, it appears that the whole team were invited to the wedding and, whilst it was certainly nice that Dr Sabin invited her team to

the wedding, we cannot read anything specific into the relationship between her and the claimant from this.

July 2018 Breaks: the Borer system

122. On 24 July 2018, Dr Sabin raised a query with the claimant about whether she had recorded a lunch adjustment correctly on her timesheet. The respondent used a piece of software called Borer to record hours worked and employees were expected to ensure that it accurately captured the hours they had worked in any particular day. This system would automatically assign half an hour for lunch each day, and if employees chose to take a longer lunch break or to take an additional break at another time of day (for example, a cigarette break), they were required to go into the Borer system and add those details. The issue on this day was that Dr Sabin believed that the claimant had taken longer than half an hour for lunch but had not inputted it into Borer.

123. The claimant suggested that in reality the other members of the team would not update Borer, for example when taking cigarette breaks. However, the evidence we heard did not corroborate this. For example, Dr Sabin herself said that she would record cigarette breaks, and although the claimant says that Miss Loader did not record additional breaks, the evidence she gave was in fact that she would do so sometimes, because it was only sometimes that she took additional breaks – but if she did, she would record them. Miss West also confirmed that she would have to sign out and in on the system if she took a full hour for lunch and that her manager would check it, and Mrs Delaney said that if she went for a walk around the building she would use the system to record her time.

124. We find that, given that the claimant's response to this matter appears to be that others do not record their time accurately, rather than that the claimant did not take more than half an hour for lunch, this leads us to conclude that the claimant had taken more than half an hour for lunch but not recorded this on the system.

125. We find that the claimant mistakenly thought that, although it was a technical requirement, in reality there was flexibility about whether to do it or not and that it was not really a rule that anyone worried about following too closely. We find that the claimant was mistaken and that others were recording their time, and therefore that it was appropriate for Dr Sabin to raise this matter with her. We note that no action was taken against the claimant in relation to this, she was simply reminded to record her time which we find to be a reasonable response to the situation.

Medical appointment – 1 August 2018

126. On 1 August 2018 the claimant had a medical appointment. She requested to work from home for the remainder of her working day (page 168). Dr Sabin initially incorrectly said that the claimant's appointment would finish around the time that she finished work anyway, but when informed that was not the case, agreed to the claimant working from home for 1.5 hours. Although the claimant's request was granted, she felt that she had been

questioned in a way that others in the team were not before her request was agreed to.

127. Within the claimant's team, the starting point at that time (being before COVID) was that the team did not ordinarily work from home and therefore the normal expectation was to attend work. However, we heard evidence from some of the claimant's colleagues that they were allowed to work from home from time to time. Specifically, Miss West recalled that she and others were given permission to work from home but the claimant was not, and therefore the claimant appeared to her to be being treated differently. Ms Boyce said that she did not recall ever being refused permission to work from home, whereas the claimant was. Miss Loader on the other hand said she rarely asked to work from home as her third party employer preferred her not to, and said that the only times she recalled others doing it was if they had visits close to their home. Dr Sabin herself recalled having previous requests to work from home refused.

128. It is clear that the claimant felt aggrieved and micromanaged by the level of questioning from Dr Sabin. However, from the evidence we heard, Dr Sabin estimated (which we accept) that the claimant made approximately twice as many requests to work from home as others in the team. We further find that the claimant was not aware of this, as this was not raised with her, and so was unaware of the issue. Dr Sabin also had, as explained above, more general concerns about the claimant's timekeeping and a lack of trust in the claimant particularly when working from home. Therefore, it was acceptable for Dr Sabin to question the claimant given the frequency with which she requested to work from home, but equally it is understandable that the claimant felt targeted given that she would not have known that she was requesting this significantly more frequently than her colleagues. It is however worth noting that, although in an email she sent to herself on 1 August 2018 (page 169) the claimant said that no issues had been raised with her in supervision, that was not the case: issues had been raised, just not specifically about requests to work from home.

129. Finally, we would add that before any request to work from home could be granted, the respondent would need to check that this would not place anyone else in the office in breach of the lone worker policy (for example, if other employees were already attending external appointments and this would leave only one colleague in the office).

<u>Claimant's absence from work – August 2018</u>

130. In August 2018 the claimant was absent from work for a period of eight weeks during August and September 2018 due to a hernia operation.

131. The claimant returned to work on 27 September 2018. Initially, no phased return to work was offered to her, although she did attend a return to work meeting however we do not have sight of any notes from that meeting. Following a supervision meeting on 9 October 2018, the claimant was then offered a phased return (page 170).

132. The claimant's position is that she was only offered a phased return once she asked for it. Dr Sabin's position is that the claimant would have been

asked if she needed any adjustments at the return to work meeting but did not ask for any.

133. Without seeing the notes of the return to work meeting, it is difficult to say exactly what was discussed at that time. There was no strict requirement for a phased return to have been offered, we find that whether or not it should have been would have flowed from the nature of the discussion between them about the claimant's recovery. We find that the claimant later shared with Mrs Falconer that she felt very tired following her return to work, and Mrs Falconer suggested that a phased return should be provided to her. This prompted the claimant to request one, which Dr Sabin then offered her. This is consistent with a later internal email (page 589) where Dr Sabin tells Mr Bonas that the claimant had requested a phased return.

134. We would add that we have seen an email exchange between Dr Sabin and Mr Bonas from December 2018 relating to an occupational health referral (page 589). Within this, a comment is made by Dr Sabin about the fact that the claimant was off sick for *"considerably longer than the suggested recovery period (8 weeks rather than 1-2)"* following her hernia operation. We find that when the claimant returned to work in September 2018 Dr Sabin had a perception that the claimant had already had more time off than was usually needed, and therefore it would not have occurred to her to also offer a phased return.

Removal from Case Management Plus – 2 October 2018

135. The claimant alleged that she was removed from a new service called Case Management Plus on 2 October 2018 and not told why. No other evidence was presented on this by either party and therefore we cannot make any finding, save to say that we accept the claimant's evidence that she was removed from it.

Discussions with university union and with Mr Brown – October 2018

136. On 15 October 2018 the claimant sought advice from her student union regarding her work situation. In an email she sent to the university she referenced concerns having been raised with her in July 2018 regarding her work, and her being asked by the university whether she would like to continue with the course or not. She was therefore clearly aware from at least July 2018 that the university had significant concerns.

137. Later that month the claimant spoke to Mr Brown again about her concerns at work. In the pleaded issues, the claimant refers to this as having taken place on 19 October 2018 (it was originally listed as 18 October 2018 but she amended the date in the final version). However, in an email to herself about the conversation on 19 October 2018 (page 179) she refers to having *"Met with Trevor yesterday.."*. We therefore find that the correct date was in fact 18 October 2018.

138. In her email to herself, the claimant set out what she had discussed with Mr Brown and, at the end of one particular bullet point, said *"this is how I am now starting to feel due to the impact these two are having on me, is it about race"*. A key question is whether that reference to race is a note to

herself about her own reflections as she wrote herself the summary email, or a record of what was actually discussed with Mr Brown. Mr Brown denied that race was mentioned and again did not escalate the matter to Mrs Roberts.

139. We find that race was not referenced in the claimant's conversation with Mr Brown. We again find that, if it had been, Mr Brown would have been alive to that and would have addressed it further. We also note that the claimant's later Dignity at Work complaint (to which we turn below) did not tick the box to reference race or reference it at the investigation meeting, which would be consistent with the claimant having not raised race discrimination as a concern verbally here either.

Break from university course – October 2018

140. Towards the end of October 2018, the claimant chose to pause her university course. We were not presented with details of why this was, however we assume that it would have been linked to her prior discussions with the university about their concerns and the pressure that the claimant was under in relation to her performance.

141. Also relevant at this stage is an issue about whether the claimant had the relevant professional qualification for the role. Dr Sabin's view was that it was a requirement for the role that the claimant be working towards such a qualification: however as outlined above this was not in fact a requirement of her contract. By "relevant professional qualification", the respondent means something more than just a degree – this is a specific type of qualification which enables registration with a professional body. This was a misunderstanding, as it was not in fact a requirement in the claimant's job description, however we find that Dr Sabin did not realise this and her concerns were genuine, albeit misplaced.

Christmas meal – December 2018

142. In December 2018, the there was a work Christmas meal. The claimant's colleagues told her to make sure that she logged the exact times they had been out for their meal as she was being monitored whereas they would not be checked because they saw how she was treated differently. It is clear that at this stage the claimant's colleagues had a perception that she was being micro-managed and that this was unfair.

Three-way supervision – 28 January 2019

143. The claimant attended a supervision meeting with Dr Sabin and Mrs Delaney. During this meeting it was agreed that Helen Taylor would pick up the claimant's supervision during Dr Sabin's maternity leave period, however if the claimant had not restarted her university course by that point then Mrs Delaney would supervise the claimant.

144. During the course of this meeting, reference is made to the claimant completing a table with all of her work on it, however no reference is made to performance management.

145. It is worth noting that in fact Mrs Delaney had been managing the team during the latter part of 2018, however the claimant's line management had remained with Dr Sabin. This situation arose because Dr Sabin had taken on additional psychology duties, however given the claimant's university work and requirement for clinical supervision, the decision was made that Dr Sabin would retain line management for the claimant until she herself went on maternity leave.

Dr Sabin's maternity leave period

146. Dr Sabin was on maternity leave from 15 April 2019 to 3 January 2020, followed by a period of annual leave and so she returned to work on 10 February 2020. The claimant's line manager during that period was Mrs Delaney. Although, given that she had paused her university course, there was no formal supervision by Helen Taylor, there does appear to have still been some contact between them for guidance or support.

The claimant's cold – 16 April 2019

147. On 16 April 2019 the claimant had a cold and requested to Mr Bonas that she work from home that day. Mr Bonas informed her that if she was sick she needed to take a sick day. The claimant says that Mrs Delaney was permitted to work from home in that situation. We find that Mrs Delaney is not an exact comparator here: as a manager, it was more commonplace to remain contactable whilst unwell in order to avoid letting the team down and we accept her evidence that on occasion she would continue to check and respond to emails whilst being off sick – this is not a question of being permitted to work from home, but rather not feeling able to switch off when ill.

148. Due to not being allowed to work from home, the claimant came into the office that day however felt too unwell and so left early. The claimant was therefore in fact too ill to work in any event.

Concerns raised with Miss Loader

149. The claimant attended a team development day on 5 June 2019 and had a discussion with Miss Loader on that day and the subsequent day about how they felt she was being targeted and unsupported by management. Miss Loader made no mention of race when referring to this discussion in her witness statement and we find that race was not mentioned, although their more general concerns clearly were. There was clearly a perception that the claimant was being treated differently to others.

150. Miss Loader also raised a concern about the way that the administration team treated the claimant, specifically targeting the claimant to take phone calls. Mrs Delaney explained, and we accept, that there was an issue with the administration team, but that this was not just in relation to the claimant. The wider issue was that the administration team had targets and therefore would (unfairly) insist on matters being dealt with immediately. Ms Boyce for example had been specifically upset by this before.

Restarting university course

151. On 15 July 2019, Helen Taylor emailed Mr Bonas and Mrs Delaney to say that she had spoken to the university about the claimant potentially restarting on the university course (page 618). She explained that the claimant could start back whenever appropriate, however if she had taken more than a year off she would still only be given one year extra to complete the course (so, for example, if she took 18 months off she would only carry one year forward and would lose 6 months of course time). This was a genuine deadline imposed by the university and it was therefore necessary for the respondent to try to work out whether the claimant's break would be over a year or not. It would also have been important for the respondent to understand the claimant's intentions so that they could plan workload and supervisions accordingly.

152. During the course of September, discussions took place about the claimant's potential return to the course. This included a discussion between the claimant and Mr Brown on 11 September 2019 where she raised concerns about whether she could continue with her course: the claimant appeared to believe that the issue was a lack of support from the respondent for her completing the course, and did not appear to realise that the core issue was that if the break went beyond a year she would lose time available under the university's rules.

153. On 11 September 2019 the claimant confirmed that she had paused the course around 29 October 2018 so it had not yet been a full year's break, and Ms Taylor responded to say that this was really positive news. This shows that Ms Taylor genuinely wanted the claimant to be able to continue. The claimant did ultimately restart the course, although the precise date is unknown.

<u>Supervision meeting – 18 July 2019</u>

154. The claimant attended a supervision meeting with Helen Taylor and Mrs Delaney on 18 July 2019 (page 621). At this meeting there was a discussion about the claimant's potential return to university and the logistics around this.

155. During the meeting the claimant raised her concerns about perceptions and so she was clearly aware of the performance concerns. It is true that the meeting did not raise anything about a capability procedure (in keeping with the lack of clarity identified above about whether the informal process was ongoing) however the meeting was in the context of helping the claimant to improve her performance, the expectations of her and the barriers to performance. A diagram was also prepared (page 623) which set out a number of the challenges the claimant experienced: this would have taken some time to complete and shows a supportive attitude towards helping the claimant from the respondent.

156. The claimant has said that one of her challenges around this time was that she would get tied up in "gatekeeping" colleagues reports, leaving less time for her own. We accept this would have been the case, as it would align with the claimant's tendency to volunteer to help with things. However, that does not detract from the performance concerns.

Informal capability procedure – 12 August 2019

157. At this stage, there remained a lack of clarity as to whether the claimant was in the informal performance process or not. The claimant attended a supervision meeting on 12 August 2019 where Mrs Delaney mentioned informal capability in relation to outstanding reports.

158. Given the discussions at the July supervision, it was clear that there were still concerns about the claimant's performance, therefore this should not have been a great surprise to the claimant. The concern about reports being late was genuine, and it was appropriate to take that matter forward. We can see from documents in the file (pages 625 to 627) that the approach taken was supportive (for example, telling the claimant to postpone certain other tasks until her backlog of work had been cleared), but that the claimant was also told that there may be a need to move to the formal process if progress could not be made. Therefore, we find no criticism in the respondent's actions, save that it was not clear before the meeting whether the informal process was still ongoing or not. We would add that we think the claimant's reaction to the process again reflects that the claimant in her mind distinguishes between poor quality work (which is a performance issue) and delays in submitting satisfactory quality work (which she does not see as a performance issue). Both are performance issues.

159. The claimant later raised at a further case work discussion on 20 August 2019 (page 649) that she had not been aware that informal capability had been discussed: the claimant was incorrect, it had clearly been discussed at the meeting on 12 August and we cannot see why the claimant did not believe it had been.

160. On 2 September 2019 Mrs Delaney informed the claimant that, once the claimant had cleared her backlog of reports, the matter could be closed and a line drawn under it. This shows that the informal process was very specifically targeted at this one area of concern, with a hope that the formal process could be avoided. By 18 September 2019 the backlog had been cleared and Mrs Delaney emailed the clamant to confirm this and thank her for her work resolving the issue (page 690). This was a supportive message. Again, however, this email did not specifically clarify what was happening with the performance process.

Complaint to Mr Brown – September 2019

161. On 11 September 2019 the claimant met with Mr Brown to discuss her concerns, and they followed this up with a further discussion on 18 September 2019. This appears to have initially centred around the claimant feeling unsupported in relation to her university course, but then on 18 September 2019 widening to relate to her more general concerns about why capability kept on being raised with her. We find that the claimant's concerns were discussed with Mr Brown however no mention of race was made. This is supported by the fact that her later Dignity at Work complaint also did not reference race.

162. Mr Bonas emailed Mr Brown on 18 September 2019 (page 679), talking about comments being made about relationships, bias, and potential

bullying behaviour. The tone of this email shows that Mr Brown had clearly spoken with Mr Bonas about the concerns raised by the claimant on the same day (this also further supports that the date of the conversation was indeed 18 September 2018). In his email Mr Bonas does not mention race, which indicates to the Tribunal that Mr Brown had not mentioned race to him.

Email sent to claimant in error – 23 September 2019

163. On 23 September 2019 an email was accidentally sent by Mrs Delaney to the claimant, instead of to its intended recipient. It is somewhat unclear whether the intended recipient was Mr Bonas or Ms Taylor, however we do not believe this matters for the purposes of the claimant's claim.

164. The situation came about because Mrs Delaney had received a reference request in respect of the claimant (page 713) for some additional duties the claimant wished to take on alongside her role. Mrs Delaney was concerned about how to provide a reference request which would balance the need to be honest (i.e. not lie about the fact that the claimant's performance had been a cause for concern) but equally not disadvantage the claimant.

165. She intended to seek guidance about this and emailed about the issue, but accidentally sent it to the claimant. The claimant was highly offended by what she read.

166. The email said: (page 709)

*Hi, we need to talk.*

*Gurpreeti has told me today she has been offered a job doing group work for 2 hours on a Saturday with perpetrators of DV and has put my name down as a reference. I have told her she needs to complete a declaration of interest form which she was okay about doing and understood how to do this and why it is needed.*

*Given current concerns that we have openly shared with her and how we have only be able to prevent formal capability due to a lot of support the reference is interesting. It becomes a tangible piece of recorded statement about her behaviour and performance and must be both honest, not a problem, and one that does not unfairly disadvantage. Therefore we can be honest that we are not engaged in a formal capability process cannot state that we haven't had any concerns about time management and deadlines. This can then also be a strong piece of evidence in future about how we viewed her performance at this time and what we were prepared to publically state and therefore it will show the strength of concern we have had.*

*Honesty and fairness, both our core beliefs but at times can be hard to manage together in one document*."

167. The claimant felt that this email showed that Mrs Delaney was targeting her and planning how to remove her from the company. Having reviewed the email and its context, and heard Mrs Delaney's evidence, we respectfully disagree with the claimant's interpretation. We find that Mrs Delaney was in

fact genuinely worried about how to give an honest reference without impacting the claimant's chances of being given the role (because she did not want to lie and pretend that the claimant's time keeping and deadlines had not given cause for concern). In respect of the reference to it being a strong piece of evidence in future, we find that by this she meant that, if she did give a positive reference saying everything was fine, and then later wished to start formal performance management, the claimant might argue that her performance must have been completely fine or the reference would have mentioned it.

168. The email was clearly not meant for the claimant's eyes, and we can understand that it would have been difficult for her to read that about herself. Whilst we do not think that this revealed any plot to remove the claimant, it did clearly show that there was a lack of confidence on Mrs Delaney's part that the performance issues were resolved permanently.

169. There is one further point we must make about this email. We find that no genuine and sincere apology has ever been given to the claimant for it having been sent to her, which we find surprising. It appears that some form of apology was provided, but we do not consider this to have been a genuine acknowledgement of the hurt which it caused the claimant.

170. The claimant was then off sick from 25 September 2019 to 8 October 2019 with work related anxiety. During this period, Mrs Falconer discussed the issues relating to the claimant with her supervisor, Ann Ballantyne, at their supervision meeting (page 728). We saw an extract from supervision notes which indicated that Mrs Falconer had informed her manager that the claimant felt targeted and that she had been very upset. The note also said that the claimant believed the behaviour to have racist overtones. Ms Ballantyne said that she would mention it to Mr Brown.

171. We accept that these notes are accurate and therefore Mrs Falconer did raise a concern of potential race discrimination to Ms Ballantyne on 1 October 2019. Mr Brown said that Ms Ballantyne did not raise this with him despite the notes saying she would, and we also accept this evidence as we believe he would have paid attention to an allegation of racism being made by one of his team. We must therefore conclude that Ms Ballantyne did not in fact raise the matter with Mr Brown and we find that disappointing.

172. On 15 October 2019 the claimant met with Mr Brown and discussed the concerns she had with him. Again, we find that she did not mention race. On the same day, she had a return to work meeting with Mrs Delaney where Mrs Delaney sought to discuss the matter and the claimant said that she would not discuss it without someone else being present. No follow up meeting appears to have been arranged and so the claimant would have felt unsupported.

Dignity at work complaint ("**DAW**")

173. On 9 October 2019 the claimant raised a formal DAW complaint to HR (page 777). This is a process within the respondent to raise complaints of discrimination, and the respondent used a standard form for this.

174. At the start of the form were a number of boxes for employees to tick the type of harassment or discrimination that they were complaining about. The claimant ticked “Bullying” and “Other”. She did not tick the box for race discrimination. In the section which asked for the date of the act complained about, she said 23 September 2019. In the content of the form she then set out the email received from Mrs Delaney on 23 September 2019, along with a narrative of various incidents between 25 May 2017 and the reference request being received.

175. We find that, whilst the DAW form is used for discrimination complaints (with there being a separate process for general grievances), nevertheless the fact that the claimant did not tick the race discrimination box nor set out any specific allegations of race discrimination mean that this was not a complaint of race discrimination but more of a general complaint about bullying and unfair treatment.

176. The DAW complaint was not addressed with the claimant until a holding letter dated 9 December 2019, followed by a meeting on 28 January 2020. The claimant’s union representative also had to chase progress twice during January 2020. We see no good reason for this delay. During this period the claimant had the matter hanging over her and was still reporting to one of the people that she had complained about without anyone showing an interest in the level of concern that she was raising. It took two months to even send her a holding response and the claimant must have felt unsupported and as though the respondent did not care about how she was feeling. It is also relevant to note that the claimant was not granted a change in line manager or supervisor pending resolution of the matter: whilst there was no strict requirement for the respondent to do so, we find that in those circumstances it would be even more imperative to close the matter down as swiftly as possible.

177. After being given the date for the meeting, the claimant emailed Mr Brown to say that she was unable to make the date suggested and asking for another date. Mr Brown replied to question why she could not attend and commented that *“We need to have this meeting as soon as possible to address this matter, which has been unresolved for a few months now*”. Whilst we agree the meeting was important and find that the claimant had not been particularly forthcoming about why she could not attend on that day, we find it ironic that Mr Brown referenced the fact that the matter had been unresolved in this way given that it was a situation entirely of the respondent’s doing that it had not yet been addressed.

178. A Stage 1 Initial Resolution Meeting under the DAW procedure meeting finally took place with the claimant on 28 January 2020 (page 751). The meeting was conducted by Mr Brown, and Ms Sonia Williams from HR was also present alongside the claimant, her representative and a notetaker. At this meeting detailed discussions took place about the claimant’s complaint, and again the claimant did not reference race discrimination. The claimant said that she would have raised this at the next stage: we see no good reason why it would not have been raised at the earliest opportunity if it was intended to form part of her complaint. That does not mean that the claimant did not genuinely think that race played a part in her treatment, but rather that she had not told the respondent that. At the end of the meeting it

was explained to the claimant that a proposal would be put forward for a three-way meeting, and that the outcome would be put into writing.

179. The outcome was confirmed to the claimant by letter dated 24 February 2020 (page 876). This proposed a mediated meeting between the claimant and managers, and stated that *"Pursuing this via the DaW process would be both inappropriate and excessive*".

180. The DAW procedure (page 414) states that "*If informal resolution is not achieved, and mediation is not applicable, the grievance will proceed to Stage 2*". Stage 2 is a DAW investigation. The claimant was however not permitted to take the matter to Stage 2: we were given two reasons for this: first, that the allegations were historic and second that the complaint was actually performance related. Mediation was offered as an alternative.

181. It is clear to us that the allegations were not historic at all: the key prompt for the complaint was what happened on 23 September 2019 and this is the date the claimant even gave in the form as the date on when the event occurred. Whilst it did refer to historic matters, that was to demonstrate the pattern of unfair treatment she felt she received. Similarly, whilst the content did reference the performance issues (along with other matters), that was in the context of the performance issues having been discussed in the 23 September 2019 email and further she was not in any formal performance process at that time so would have no separate avenue to raise concerns about those matters. We find that there was no good reason to refuse to allow the claimant to move to Stage 2, there was nothing in the DAW procedure which allowed for this, and this must have added to the claimant's feeling that the respondent simply did not care about her concerns. We would add that, had the respondent moved to Stage 2 and given the claimant the opportunity to be fully heard in line with its own policies and procedures, the respondent might have been able to avoid the claimant feeling so unfairly treated and it might have avoided this claim from being brought against the respondent at all.

182. The claimant did not wish to have mediation however felt that the respondent kept pushing her towards this route. Specifically, she was asked to attend mediation on 22 June 2020, which she refused to do via her representative on 13 July 2020. We find that Mr Brown was suggesting mediation because he wanted to find a way to move forward and to improve the relationships within the team. Mediation is a tool that the respondent uses with their own clients so it would have seemed logical to him to suggest it. However, we would repeat that the matter would in fact have been closed down much quicker in our view if it had been taken forward under the DAW procedure.

183. When Dr Sabin returned to work in February 2020, she was made aware that the claimant had requested a change in supervision, but was not told about the claimant's formal complaint because of confidentiality. Mrs Delaney was likewise not told about the claimant's formal complaint. We have no criticism of the respondent for protecting the claimant's confidentiality, however equally we find that it was not appropriate for there to be a period of several months where an issue has been raised, nothing is

being done, and the managers know that there is an issue but not what the issue was.

184. The notes from the meeting in January 2020 were not sent to the claimant until 22 June 2020. There was again no good reason for this delay.

Carrying leave forward – December 2019 to March 2020

185. The claimant wanted to carry forward annual leave into the next holiday year, however Dr Sabin questioned this. Dr Sabin did not return to work from her maternity leave (and subsequent annual leave) until February 2020, and so we find that this occurred in February and/or March 2020.

186. There is no automatic carry forward of holiday and, given that Dr Sabin had only just returned to work, we find it reasonable and appropriate that Dr Sabin would want to make sure that any carried forward leave had been properly agreed. The claimant said that Mrs Delaney had already agreed it: it might have been more prudent for Dr Sabin to check with Mrs Delaney first, however there is nothing inherently wrong in her wanting to check the position. Of course, however, at this point the claimant is being ignored in relation to her DAW complaint and so it is natural that she has interpreted being asked about this badly, given that she believes that she is being targeted and the respondent is not doing anything to investigate that.

Team meeting and team dynamics

187. There was a team meeting on 21 January 2020 where the team dynamic was discussed. It is absolutely clear that there was a feeling within the claimant's team that there was an "us and them" culture between the team members and management. It was felt that Mr Bonas, Mrs Delaney and Dr Sabin were a "clique" (and this is in fact also raised within the team on 7 November 2018 so had been a long standing issue).

188. Following that meeting, the Code of Conduct was shared around the team. We find that this was unrelated to the claimant's issues, but was because of this issue around team dynamics and was a genuine attempt to "re-set" the relationships in the team. This was in our view a positive step.

DAW appeal

189. On 4 March 2020 the claimant appealed (via her union representative) the outcome of the DAW process to Mrs Roberts, asking for the matter to be formally investigated in line with the procedure (page 762).

190. On the same day, the claimant attended a clinical supervision with Dr Sabin, where she says that Dr Sabin was abrupt and forceful. We find that, during the meeting, the claimant will have raised her concern that she did not think Dr Sabin should be supervising her. Dr Sabin would have thought the previous matters all now closed and therefore we find she may well have been abrupt and forceful in her response as she would have wanted to move forward. She would not have realised that the claimant had raised a formal complaint and been denied the opportunity to have that fully

investigated, whereas from the claimant's perspective of course the matter was not closed as she felt there was an open appeal.

191. On 6 March 2020 Mrs Roberts took advice from Ms Williams in the HR team (page 785), who advised her that the claimant did not have a right of appeal. Whilst we cannot criticise Mrs Roberts for accepting the (in our view, incorrect) advice from HR, we do note that Mrs Roberts relied on the same person to advise her on the process as had advised Mr Brown on the matter earlier, despite the claimant challenging that decision. It was inevitable that Ms Williams would advise in this way.

192. On 17 March 2020 Mrs Roberts confirmed to the claimant by email that her appeal had not been accepted. It referred to the matters being primarily historical (which was not correct) and said that matters relating to performance should be dealt with under that procedure (which was not an option for the claimant given that there was no ongoing formal process). It also requested that supervisions resume with Dr Sabin.

Request to work from home – 9 to 16 March 2020

193. At that time, the claimant had a regular weekly appointment at Great Barr School every Tuesday at 11.20am. Mrs Delaney had previously given permission for the claimant to work from home in the morning before travelling to the appointment: this had been agreed to for one particular week, and did not amount to a blanket permission to work from home each week before the appointment. However, we believe that the claimant made an assumption that this would be permitted each week.

194. When the claimant sought to work from home in the morning on 9 March 2020, this was questioned by Dr Sabin. We find that it was reasonable for her to question this. The request was ultimately refused because the school was not a significant distance from the office and therefore the claimant would have time to work productively from the office before going to the appointment. We did hear evidence from Mrs Falconer that suggested the travel distance was significant however on reviewing the travel time for ourselves using an online travel time site we are confident that it was a short journey.

195. Whilst the refusal was in our view reasonable, in the context of the other ongoing matters whereby the claimant felt picked up by Dr Sabin and her concerns were being ignored, we can understand why she felt this was another example of being picked on.

Meeting with Mrs Roberts – 6 May 2020

196. On 6 May 2020 the claimant attended a Teams meeting with Mrs Roberts. This meeting was about supervision, but during the course of it the claimant said that she had additional evidence gained through her DSAR between February and May 2020 which was relevant to her DAW complaint. Mrs Roberts requested that this be sent to her.

197. The claimant did not do so and we find that the claimant should have done. That said, we also find that Mrs Roberts should have chased the claimant for it.

Resignation

198. On 5 August 2020 the claimant handed in her resignation. She gave no detailed reasons in her resignation email, however she was later sent a leaver questionnaire which she completed (page 939): in this she alleged race discrimination. This leaver questionnaire appears to have been completely ignored. We accept the respondent's submission that none of the management team were made aware that she had included that in the leaver questionnaire (or in fact given any information from it). However, that does call into question what the point of the questionnaire was: it stated on the form that issues raised would have to be investigated and yet the form was not provided to anyone to investigate. This would have added to the claimant's feeling that no one cared about the concerns she had raised with the respondent.

199. On 7 August 2020 Dr Sabin asked the claimant to find out her leave date from HR. This was not in accordance with usual process, however we find that this was a genuine mistake on Dr Sabin's part.

Grievance

200. On 12 August 2020 the claimant raised a grievance (page 854). This was specifically about the DAW process. Following receipt of this, Mrs Roberts asked a new HR consultant within the respondent, Omar Ejaz, to undertake an independent review as to whether the DAW complaint had been properly resolved.

201. On 1 October 2020 the claimant emailed HR asking for a response to her grievance (page 354). Once again, the claimant had not been kept informed about what was happening, and she would not have been aware of the independent HR review.

202. On 5 October Mrs Roberts wrote to the claimant. In her covering email she explained that her last day at the respondent herself would be 7 October 2020. In her letter Mrs Roberts noted that the claimant had not in fact provided the additional information from the DSAR that she had requested and said that, before the grievance is investigated, this should be re-visited.

203. 5 October was also the last day of the claimant's employment. We find that it must have been somewhat galling for the claimant to receive this only on her last day, although we do not think that this was deliberate on Mrs Roberts' part. We do think however that this represents Mrs Roberts trying to clear matters from her desk before she left the organisation herself, so that it would look as though the respondent had done what it could. From the claimant's perspective however by this point, she's already leaving and it was too late.

204. On 22 December 2020 the claimant's union representative made contact with Mrs Roberts' replacement to ask for an update. This is somewhat odd in light of the letter dated 5 October 2020. We expect that, by this point, the

claimant is about to submit her claim to the Tribunal and therefore her representative is considering things with her afresh, and appears to either not be aware or have forgotten that the ball was in the claimant's court to send information to the respondent.

**Law**

Direct Discrimination

205. Section 13 of the Equality Act 2010 ("**EA**") provides that:

> *(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.*

206. Section 23 of the EA goes on to provide that:

> *(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.*

207. In the House of Lords decision of *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11, [2003] IRLR 285, ICR 337*, it was held by Lord Scott that "*the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects of the victim save that he, or she, is not a member of the protected class"*. Whilst not strictly binding as a first instance decision, in *Ferri v Key Languages Ltd ET Case No. 2302172/04* it was held that the appropriate comparator was someone with the same work performance, temperament and approach to criticism as the claimant.

208. The test as to whether there has been less favourable treatment is an objective one: the claimant's belief that there has been less favourable treatment is insufficient. Likewise, the treatment must be less favourable, not merely different.

209. Where there is less favourable treatment, the key question to be answered is why the claimant received less favourable treatment: was it on grounds of race or for some other reason (*London Borough of Islington v Ladele [2009] ICR 387*). As Mr Justice Linden said in *Gould v St John's Downshire Hill 2021 ICR 1, EAT:*

> *"The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective…For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision…[and] the influence of the protected characteristic may be conscious or subconscious."*

210. In *Nagarajan v London Regional Transport 1999 ICR 877, HL*, Lord Nichols said that

*"discrimination requires that racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds…had a significant influence on the outcome, discrimination is made out"*

211. Often there will be no clear direct evidence of discrimination on racial grounds and the Tribunal will have to explore the mental processes of the alleged discriminator and draw inferences. The claimant will need to prove facts from which a Tribunal could properly conclude that the respondent had committed an unlawful act of discrimination, and this can include the drawing of inferences. However, simply establishing a difference in status is insufficient: there must be "*something more*" (*Madarassy v Nomura International plc [2007 EWCA Civ 33* and *Igen Ltd v Wong [2005 ICR 931]*). Likewise, unreasonable conduct alone is insufficient to infer discrimination.

212. A failure to investigate a complaint of discrimination can itself amount to race discrimination, if the reason why the complaint is not investigated is on grounds of race (*London Borough of Lewisham v Ms Chamaine Ellis UKEAT 62_00_2205*).

Victimisation

213. Section 27 of the EA provides:

*(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*

*a) B does a protected act, or*

*b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act:*

*a) Bringing proceedings under this Act;*

*b) Giving evidence or information in connection with proceedings under this Act;*

*c) Doing any other thing for the purposes of or in connection with this Act; and*

d) *Making an allegation (whether or not express) that A or another person has contravened this Act.*

214. In *Waters v Commissioner of Police of the Metropolis [1997] ICR 1073*, Waite LJ said:

*"The allegation relied on need not state explicitly that an act of discrimination has occurred – that is clear from the words in brackets in section 4(1)(d). All that is required is that the allegation relied on should have asserted facts capable of amounting in law to an act of discrimination by an employer within the terms of section 6(2)(b)."*

215. In *Durrani v London Borough of Ealing UKEAT/0454/2012*, Langstaff P said

> *"The complaint must be of conduct which interferes which a characteristic protected by the Act……I would accept that it is not necessary that the complaint referred to race using that very word. But there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies…*
>
> *This case should not be taken as any general endorsement for the view that where an employee complains of "discrimination" he has not yet said enough to bring himself within the scope of Section 27 of the Equality Act. All is likely to depend on the circumstances…"*

216. In addition it was clarified in *Fullah v Medical Research Council UKEAT 0586/2012* by HHJ McMullen QC that:

> *"The person on the receiving end of a complaint of victimisation ought to be able to identify what protected characteristic it is in respect of…We accept, of course, that the word "race" does not have to appear but the context of the complaint made by a complainant does.*"

217. The reason for the treatment does not need to be solely because of the protected act to amount to victimisation, but it does need to have a significant influence (*Nagarajan v London Regional Transport 1999 ICR 877, HL*, and paragraph 9.10 of the Code*)*. This means an influence which is "more than trivial" (*Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 93*). The motivation does not need to be conscious (*Nagarajan,* above). It is possible for a dismissal (or detriment) to be in response to a protected act but nevertheless not amount to victimisation if the reason for the treatment is not the complaint itself but a separable feature of it such as the way in which the complaint was made (*Martin v Devonshires Solicitors [2011] ICR 352*).

218. The detriment will not be due to a protected act if the person who put the claimant to the detriment did not know about the protected act (*Essex County Council v Jarrett EAT 0045/15*).

Burden of Proof

219. Section 136 of the EA (burden of proof) states that:

> *(1) This section applies to any proceedings relating to a contravention of this Act.*
>
> *(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

220. Put simply, the claimant must show facts from which the Tribunal could infer that discrimination took place, in the absence of other explanation. If the claimant cannot do that, the claim fails. If the claimant does show such

facts, then the burden shifts to the respondent to show that discrimination did not take place. In *Madarrassy v Nomura International [2007] ICR 867* CA, Mummery LJ stated 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."

221. Something more than a finding of less favourable treatment is required in order to shift the burden of proof to the respondent, however the "something" need not be considerable (*Deman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1276)*. Unreasonable behaviour alone is not evidence of discrimination (*Bahl v The Law Society [2004] IRLR* 799) but can be relevant to considering what inferences can be drawn (*Anya v University of Oxford & anor [2001] ICR 847)*

222. Where the burden has shifted to the respondent, it is then for the respondent to prove on the balance of probabilities that the less favourable treatment was not because of race.

223. Although the burden of proof is a two stage test, there are cases where an Employment Tribunal can legitimately proceed directly to the second stage of the test (see, for example, *Laing v Manchester City Council and anor 2006 ICR 1519, EAT*).

Time Limits

224. Section 123 of the EA (time limits) provides that:

*(1)* "….*proceedings on a complaint within section 120 may not be brought after the end of -*

*a) The period of 3 months starting with the date of the act to which the complaint relates, or*

*b) Such other period as the employment tribunal thinks just and equitable.*

*(2) ….*

*(3) For the purposes of this section –*

*a) Conduct extending over a period is to be treated as done at the end of the period;*

*b) …*

225. There is a distinction between a continuing act and an act with continuing consequences. Where there is a continuing policy, rule, scheme, regime or practice, that will amount to conduct extending over a period, however where there is a one off act which has consequences over a period of time, that will not (*Barclays Bank plc v Kapur [1991] 2 AC 355, HL* and *Sougrin v Haringey HA [1992] ICR 650, CA*).

226. However, the Tribunal should not focus too heavily on whether there is a policy, rule, scheme, regime or practice. The Tribunal should ask itself whether there was an act extending over a period, rather than a series of unconnected or isolated individual acts (*Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530, CA*). It is relevant whether the same or different individuals were involved, and a break of several months may mean that continuity is not preserved (*Aziz v FDA [2010] EWCA Civ 304*).

227. Whilst it is a broader test that that for unfair dismissal, exercising discretion to extend time is the exception rather than the rule (*Robertson v Bexley Community Centre [2003] EWCA Civ* 576). When considering whether to extend time, the Tribunal should consider all the circumstances (*Robertson, cited above*), including the balance of prejudice and the delay and reasons for it. Although *British Coal Corporation v Keeble [1997] IRLR 336* sets out a checklist approach in line with section 33 Limitation Act 1980, it is not necessary to go through the full checklist in each case, as long as all significant factors are considered (*Adedeji v University Hospitals Birmingham NHS Foundation [2021] EWCA Civ 23* and *Afolabi v Southwark London Borough Council [2003] EWCA Civ 15*). Factors which are almost always relevant include:

    a. The length of and reasons for the delay; and

    b. Whether the delay has prejudiced the respondent.

    The merits of the case can be taken into account when considering the balance of prejudice.

228. The fact that a delay is short does not mean that an extension of time should automatically be granted. Per *Underhill LJ* in *Adedeji (cited above)*:

    *"Of course employment tribunals very often have to consider disputed events which occurred a long time prior to the actual act complained of, even though the passage of time will inevitably have impacted on the cogency of the evidence. But that does not make the investigation of stale issues any the less desirable in principle. As part of the exercise of its overall discretion, a tribunal can properly take into account the fact that, although the formal delay may have been short, the consequence of granting an extension may be to open up issues which arose much longer ago*".

## Conclusions

229. We set out these conclusions by reference to the agreed list of issues at pages 934 to 938 of the bundle. In relation to time limits, we have considered this specifically where relevant in relation to individual allegations at the end, as this only becomes relevant where the allegation of discrimination would otherwise succeed.

230. The numbering used below reflects the numbering on the agreed list of issues.

Direct Discrimination

*Did the respondent treat the claimant less favourably than her comparator(s) in materially similar circumstances by the following?*

*If so, was this because of the claimant's race?*

*The claimant relies on the following comparator(s): Claimant has said "Every member of the team was Caucasian, reporting to the same managers"*

*2.1 On 15 November 2016 Mr Leon Bonas and Ms Natasha Sabin monitored the claimant's timekeeping*

231. We find that Dr Sabin did monitor the claimant's timekeeping on this date. Mr Bonas did not, although he then participated in the discussion about what action to take. By this time, Dr Sabin had witnessed timekeeping issues and this was an ongoing issue (as referenced in her email to Mr Bonas about the matter).

232. The Tribunal concludes that the claimant's colleagues would not have been monitored in the same way. However, the appropriate comparator must be in materially similar circumstances. This means that, in this case, they would be a Caucasian employee who had a history of timekeeping issues who entered the building at 10am to sign in. None of the claimant's colleagues had the same timekeeping issues and therefore it is not appropriate to compare the claimant to them.

233. We conclude that a comparator in materially the same circumstances, i.e. with known timekeeping issues, would have been monitored in the same way. The reason for the treatment was the history of poor timekeeping. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.2 On 12 December 2016 Mr Leon Bonas failed to offer the claimant a full-time contract*

234. It is true that the claimant was not offered a full-time contract, however this was Mr Brown's decision, in conjunction with finance and HR, and not for Mr Bonas to decide.

235. The appropriate comparator in this case is a Caucasian colleague who has also requested an increase in their working hours. We conclude that this person would have been treated in the same way, as it was a matter driven by budgetary considerations. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.3 On 25 May 2017 Mr Leon Bonas told the claimant to "choose her battles wisely"*

236. We were unable to make a definitive finding as to whether this was said or not. However, even if it was said, we found that this was not threatening in

nature but rather would have been advice that taking time off in lieu would seem preferable to the issue being treated as a conduct matter.

237. In this case, the appropriate comparator would be a Caucasian colleague who was also suspected of not having worked their full working hours (and not just any Caucasian member of the claimant's team), and we conclude that, if he said this to the claimant, he would have said it to any person in that situation. Therefore, the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.4 On the same date Mr Leon Bonas required the claimant to attend an informal conduct meeting*

238. There was an informal conduct meeting, although we believe it to have been a joint decision between Mr Bonas and Dr Sabin to hold that meeting (after advice from HR).

239. We conclude, however, that there would have been an informal conduct meeting with any colleague who was suspected of not having worked their full working hours and who had said that they had been working on CareDirector when they had not and so the Caucasian comparator (who would also be suspected of not working their full working hours) would have been treated in the same way. We find that this was in fact an entirely appropriate course of action for the respondent to take in these circumstances. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.5 Between 2 August 2017 – 7 August 2017 Mr Leon Bonas and Ms Natasha Sabin raised concerns about the claimant's performance with the University without informing the claimant*

240. We have found that concerns were indeed raised with the university about the claimant's performance. However, whilst the claimant's university course was self funded and not a requirement of her role, she was using her work at the respondent for the purposes of her university placement. Performance concerns in the workplace therefore became performance concerns for the university because of this.

241. The appropriate comparator here is a Caucasian employee on a self-funded university course who is using their role as their university placement, and in respect of whom the respondent had performance concerns (and so not just any other member of the claimant's team). We conclude that Mr Bonas and Dr Sabin would have raised those concerns with the university in the same way. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.6 On 12 September 2017 Mr Leon Bonas and Ms Sara Delaney emailed each other laughing at the claimant's interest in a job*

242. We have found that Mrs Delaney did email Mr Bonas to that effect, although Mr Bonas did not reply and did not laugh at the claimant. Therefore, to the extent that the allegation relates to what Mr Bonas did, it fails. In relation to Mrs Delaney however, this did occur.

243. The appropriate comparator in this case is a Causasian colleague who was also interested in the role and who was also struggling to meet the requirements of their core role.

244. We are not persuaded that Mrs Delaney would have treated that comparator in the same way. We conclude that she would have had concerns about the comparator's ability to take on the additional work, however would not have mocked the comparator as she did the claimant. We conclude that the tone of the email about the claimant, specifically laughing at her and mocking her, was prompted by Mrs Delaney's personal views of the claimant specifically. There is therefore less favourable treatment.

245. This alone does not shift the burden of proof to the respondent to prove that discrimination did not occur however it is necessary to draw inferences from the available facts. We note in particular the following:

    a. When the reference issue later arose on 23 September 2019, we have found that the claimant never received a sincere apology from Mrs Delaney for what happened. Although the contents of the email were understandable, it would have been horrible for the claimant to see and she should have received a proper apology;

    b. The claimant reported to Mrs Falconer that she felt targeted more generally;

    c. There was a general perception within the team that the claimant was treated unfairly in comparison to her colleagues, and that others were permitted to do things that she was not; and

    d. Mrs Delaney was not a supervisor but a colleague, which makes the tone of the email particularly inappropriate.

246. Taking the above into account, we conclude that there are facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof therefore shifts to the respondent to prove that race discrimination has not taken place.

247. The explanation that Mrs Delaney provided for sending the email was that she was struggling with her own change in circumstances, specifically the process of moving away from a managerial role. Whilst we accept that she was finding things difficult at that time, we do not however find that this is the reason why she sent this email in this tone of voice and we have found that this was specifically about the claimant as an individual.

248. Having rejected Mrs Delaney's explanation, we have no other explanation before us from Mrs Delaney as to why she mocked the claimant in this way, and therefore the respondent has not shown that it was not because of race. Therefore, we do find this to be an act of race discrimination.

249. There is a separate issue as to whether this claim was brought within the required time limits and we address this at the end of these conclusions.

*2.7 On 17 October 2017 Ms Sabin put exclamation marks in an email about the claimant*

250. This was in reference to an email exchange in which the claimant had requested to take on some work privately. It is accepted that this occurred.

251. Dr Sabin's explanation was that the reason for her concern was about a potential conflict of interest. Therefore, the appropriate comparator in this case would be a Caucasian employee who suggested taking on private work which Dr Sabin thought could create a conflict of interest. In this situation we conclude that Dr Sabin might have had concerns (especially if the comparator also had a tendency to take on more work that she could handle), but she would not have reacted in the way she did towards the claimant and put repeated exclamation marks with no further explanation in an email to her manager.

252. Again, the claimant was therefore treated less favourably than a comparator in materially the same circumstances would have been. In deciding whether to shift the burden of proof, we have again considered what inferences can be drawn, and note the following:

    a. We have found that Dr Sabin had a negative perception of the claimant before becoming her manager, yet did not point to any specific timekeeping issues that predated that time;

    b. There was a general perception within the team that the claimant was treated unfairly in comparison to her colleagues, and that others were permitted to do things that she was not;

    c. The claimant reported to Mrs Falconer that she felt targeted more generally;

    d. We have found that although it was reasonable to place the claimant on informal performance management, she left the process in abeyance with a lack of clarity; and

    e. We have found that Dr Sabin and Mr Bonas appear to have discussed the claimant privately on a number of occasions.

253. Taking the above into account, we conclude that there are facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof therefore shifts to the respondent to prove that race discrimination has not taken place.

254. We therefore consider whether the respondent has shown that the reason for Dr Sabin's treatment of the claimant was not due to her race. The reason presented to the Tribunal was that the situation presented a potential conflict of interest. However, we have found that this was not the real concern (and in fact it was also not a concern of Mr Bonas). Having not accepted the respondent's explanation for why Dr Sabin acted in this way,

the respondent has therefore not shown that this was not due to race. Therefore, we do find this to be an act of race discrimination.

255. There is a separate issue as to whether this claim was brought within the required time limits and we address this at the end of these conclusions.

*2.8 On 18 October 2017 Ms Sabin wrote "we got there in the end"*

256. It is accepted that this comment was made. The question is whether the claimant was treated less favourably than her Caucasian comparator would have been in materially similar circumstances. Firstly, we conclude that this was not less favourable treatment in any case: it was actually an email providing positive feedback about the claimant.

257. Secondly, we also conclude that the comparator would have been treated in the same way. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.9 During October 2017 Ms Sabin failed to respond to the claimant's requests about her contractual status*

258. We have found that the matter of contractual status was eventually dealt with in April 2018, however it took a long time for a response to be provided to the claimant and she was not kept up to date on what was happening. She never received a response to her query earlier in the year about why her contractual status was different to Dr Sabin's in 2015.

259. We have considered whether a Caucasian colleague requesting information about their contractual status would have been treated in the same way. We conclude that they would, as the reason for the lack of response was the respondent's general disorganisation and lack of action, rather than something specifically targeted at the claimant.

260. Therefore, the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

261. We must make clear however that we have considered this allegation very specifically in relation to 2017, and have not considered the status in relation to the issues around contractual status (specifically around Dr Sabin's status being changed and not the claimant's) in 2015, as that does not form part of the issues to be determined in this case.

*2.10 On 9 November 2017 Mr Bonas and Dr Sabin accused the claimant of dishonestly claiming travel time*

*2.11 On the same date the same people told the claimant she was not able to claim travel from home to work*

*2.12 On 21 November 2017 Ms Sabin emailed HR saying that the claimant was dishonest*

262. We have considered these three issues together as they all relate to the same matter, namely whether the claimant was permitted to treat the time travelling to and from the first and last appointment of the day as travel time, and the treatment she received when she sought HR advice on that issue and told Dr Sabin that she had been advised that she could treat it as working time.

263. We conclude that the claimant was accused of dishonestly claiming travel time, that this was notified to HR and that the claimant was told that she was not able to claim travel from home to work.

264. Starting first with the middle of the three allegations, as this is separate to the matter of dishonesty, we have found that it was in fact the respondent's policy that travel time to and from the last appointment of the day could not be treated as working time by employees. Therefore, it is important to note that Mr Bonas and Dr Sabin were in fact correct (under the respondent's policies) to tell the claimant that she could not claim travel from home to work.

265. The appropriate comparator for this allegation would be a Caucasian employee who was seeking to claim travel from home to work, in breach of the respondent's policies. We conclude that they would also have been told not to do so, and therefore there has been no less favourable treatment. We have taken into account that some members of the team did appear to do different things in relation to travel time however we have found that (a) some of those were not employees of the respondent and were therefore subject to alternative arrangements and (b) there was a lack of understanding about what each employee was doing, rather than it being something that was deliberately permitted for the claimant and not others. Therefore, in relation to this allegation, the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

266. Turning to the question of dishonesty, the comparator for the other two allegations would be another Caucasian employee who was seeking to claim travel time from home to appointments, and who was saying that HR told them that they could (and with evidence that HR had in fact told them the opposite). The comparator would also be someone who had previously been investigated for potential dishonesty because of the CareDirector issue in May 2017.

267. We conclude that the word "dishonest" is a strong word and the respondent did move to the conclusion of dishonestly rapidly. However, from Dr Sabin and Mr Bonas' perspective, the claimant was an employee with a history of not working full hours when working from home and generally having timekeeping issues. In their view, the claimant was someone who had previously lied about working from home (in respect of the CareDirector issue). The comparator would have the same characteristics and we conclude that in those circumstances Dr Sabin and Mr Bonas would also have suspected dishonesty and would have treated the matter as such. Therefore, there is no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any

other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails. Even if the burden had shifted, we are also satisfied that Dr Sabin and Mr Bonas have shown that the reason for the treatment was their concern about the claimant's honesty in light of what they saw as a pattern of behaviour. This applies to both allegations 2.10 and 2.12.

*2.13 On 15 February 2018 Ms Sabin started informal performance management of the claimant*

268. We accept that informal performance management was started at this point, however we also found that the claimant might not have understood that fully until early March 2018.

269. The comparator in this case would be a Caucasian employee in respect of whom Dr Sabin had performance concerns (as we accept those concerns were genuine). That comparator would have been treated in exactly the same way, therefore there is no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.14 On 1 March 2018 Ms Sabin failed to respond to the claimant's enquiries about her contractual status*

270. We have found that it did take a long time for Dr Sabin to respond to the claimant's enquiries, however ultimately a response was provided and the claimant was confirmed as a permanent employee. There was a consistent theme in this case that communications with the claimant were not as clear or regular as they could have been, and we believe this has led to some of the confusion and/or ill feeling between the parties in this case.

271. We have found that Mr Brown had to consider budgetary matters before a decision could be taken about contractual status and, whilst Mr Bonas gave his own personal views on the matter, it was Mr Brown who made the decision and not Mr Bonas or Dr Sabin. It is also important to note that this issue as pleaded is not about Mr Bonas saying that he did not want the claimant to be made permanent, but rather about the lack of response to the claimant's enquiries.

272. The appropriate comparator here is a Caucasian fixed term employee who had also asked Dr Sabin about their contractual status (who had also been working at the respondent since early 2014). In those circumstances there would still be budgetary matters to consider. We do not consider there to be anything malicious in Dr Sabin's lack of response and we conclude that the comparator would also not have been updated about the progress of the matter, and that it would have taken the same length of time.

273. Therefore there has been no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.15 On 24 July 2018 Ms Sabin spoke to the claimant about whether she was recording her lunch break properly*

274. We have found that this did happen. The comparator in this case would be a Caucasian employee who had taken longer than 30 minutes for lunch and who did not appear to have recorded that in the Borer system. We conclude that this person would have been spoken to in the same way, and it was a perfectly legitimate discussion for Dr Sabin to have, particularly given that the evidence of the claimant's colleagues suggested that they would record their time in Borer properly. Therefore, there has been no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.16 On 1 August 2018 Ms Sabin refused to allow the claimant to work from home after a medical appointment*

275. Although Dr Sabin does appear to have questioned the claimant's plans in relation to this medical appointment, she did ultimately agree to the claimant working from home after it. Therefore there was no refusal to allow the claimant to work from home on this date.

276. We have also considered the fact that Dr Sabin originally questioned the claimant's request, however in the context of an organisation where employees did not regularly work from home and where the claimant was perceived to be someone who would seek to work from home more than others (and had previously been dishonest about what they spent their time on whilst working from home), a Caucasian comparator in the same situation would have been treated in the same way. Therefore the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.17 On 27 September 2018 Ms Sabin failed to offer the claimant a phased return to work after sickness absence*

277. We have found that the claimant was offered a phased return, but only when she requested it at a later stage, not on 27 September 2018. We have found that it did not occur to Dr Sabin to offer it as she had assumed, given the length of the claimant's absence, that the claimant was sufficiently recovered not to need a phased return.

278. The comparator in this case would be a Caucasian colleague who had also had a hernia operation, followed by the same length of absence from work. Whether or not Dr Sabin was right or wrong in not offering a phased return proactively, we conclude that this was not targeted at the claimant and the comparator would have been treated in the same way. Therefore there has been no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.18 In December 2018 Ms Sabin refused to allow the claimant to log the same time as others for the work Christmas meal*

279. We have seen no evidence to suggest that this was the case and we conclude that this did not happen. It is true that colleagues of the claimant suggested to her that she ought to record her time correctly as the respondent was more likely to check her records than theirs (which turns to the general perception of the claimant being unfairly treated), however there is no suggestion that Dr Sabin ever actually did anything relating to this herself and/or refused to allow the claimant to log the same time as others. This allegation must fail.

*2.19 On 16 April 2019 Leon Bonas did not allow the claimant to work from home when she had a cold*

280. We accept that this did happen, and that the claimant then came into work but went home unwell part way through the working day. We have taken it from this that this was not a mere mild cold but actual ill health. The comparator in this case would be a Caucasian colleague at the same grade as the claimant who also had a cold (of that severity) and who had asked to work from home rather than taking a sick day. We conclude that they would have been treated in the same way (whether or not that comparator also had a history of being perceived not to work to their fullest when working from home and seeking to work from home more regularly than colleagues, but particularly so in those circumstances). We heard evidence that Dr Sabin had done some work from home when ill previously, however we have found that this was not a case of someone who was otherwise well enough to work being allowed to work from home, but rather someone who should have been off sick entirely struggling along to complete certain tasks as a manager.

281. There has been no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.20 On 12 August 2019 Mr Bonas and Sara Delaney started the capability process against the claimant without explanation*

282. There was indeed a meeting on 12 August 2019 which referenced the informal capability process: this was not formal performance management and was the first stage in the process. We have found that there had been a discussion in July 2019 about performance (albeit that the capability process itself does not appear to have been specifically discussed) and, in that context, it cannot be said that the capability process started without explanation. This allegation must therefore fail.

283. We would add that we believe that a Caucasian colleague about whom Mr Bonas and Sara Delaney had performance concerns would have been treated in the same way and therefore there was no less favourable treatment. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has

occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.21 On 11 September 2019 Ms Delaney told the claimant that potentially she could not continue with her university course*

284. At this stage, the claimant was on a break from her course and Mrs Delaney had been advised by the university that if that break lasted for more than a year then she would lose time available to complete the course. This was a valid concern for Mrs Delaney and it was entirely legitimate for her to want to discuss this with the claimant to ensure the claimant was aware of this risk.

285. The appropriate comparator would be a Caucasian colleague who was also on a break from a university course, approaching a year in duration, and who would also be adversely affected if that break went beyond a year. We conclude that comparator would have been treated in exactly the same way. We further conclude that it was in fact helpful for Mrs Delaney to update the claimant on this matter and that it would have been far worse for Mrs Delaney to have said nothing and for the year to have expired without the claimant realising she needed to take steps to restart the course in order to protect herself. There was no less favourable treatment.

286. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.22 On 23 September 2019 Ms Delaney sent an email about a reference request for the claimant in which she made comments about the claimant's behaviour and performance including that whilst she (Ms Delaney) must be honest and could not disadvantage the claimant she could not say she did not have concerns about the claimant's time management*

287. This email was indeed sent to the claimant, although it was intended to be sent to someone else. The appropriate comparator in this case would be a Caucasian colleague who has requested a similar reference and who has also recently been through the informal capability procedure. We conclude that Mrs Delaney would have reacted in the same way, and would have had the same concern about how to strike a balance between honesty and not disadvantaging the person who requested the reference. Therefore there has been no less favourable treatment.

288. We would however add that one member of the Tribunal's panel did feel that the line within the email stating "*This can then also be a strong piece of evidence"* was specifically targeted at the claimant. In their view, whilst Mrs Delaney would have written an email about a comparator in a similar way, she would not have included that line within the email. Although the other two members of the panel did not share that view and therefore the claim must fail, we have for completeness considered what would have been our view had the burden of proof shifted due to that line being included in the email. We have unanimously found that Mrs Delaney has shown that the content of the email was because of her desire to strike the right balance

between honesty to the reference seeker, whilst not disadvantaging the claimant, and therefore that the respondent has shown that there was a non discriminatory reason for the contents of the email, including that sentence. The panel have therefore all reached the outcome that discrimination has not occurred, although in different ways.

*2.23 Between December 2019 – March 2020 a manager (the claimant could not remember who) questioned whether the claimant should be allowed to carry leave forward*

289. This was positioned in evidence as being an allegation against Dr Sabin. We have found that this did happen, and that whilst it would have been perhaps advisable for Dr Sabin to check the matter directly with Mrs Delaney rather than the claimant in the first instance, this was a consequence of Dr Sabin only just returning from maternity leave and trying to understand the goings on within the team.

290. The appropriate comparator would have been other Caucasian colleagues within the team. We heard no evidence about whether any of them had been questioned about their leave (or even whether they were seeking to carry it forward) however we have seen nothing which persuades us that others in the team would have been treated any differently in similar circumstances. There has been no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.24 Between 9 March 2020 – 16 March 2020 Ms Sabin refused to allow the claimant to work from home*

291. This matter relates to a period when the claimant had a weekly appointment at Great Barr School during the course of the morning, and the question arose as to whether she must come into the office before the appointment, or whether she could work from home and travel to the appointment from home. We have found that Mrs Delaney had allowed the claimant to work from home on one occasion, but that Dr Sabin did then prohibit this and so there was indeed a refusal to allow the claimant to work from home between those dates.

292. The appropriate comparator would be a Caucasian colleague who also had an appointment at Great Barr School at 11.20am, and who lived a similar distance from the office and the appointment as the claimant did. We have found that the journey to the school was a short one and therefore there was sufficient time for the claimant to attend work and be productive before the appointment. This would also avoid any lone working issues. Therefore, we find that the comparator would have been treated in the same way. We would add specifically that, although some of the claimant's colleagues were sometimes allowed to work from home before or after other appointments, we take account specifically of where each colleague lived in comparison to both the appointment and the office: it was entirely possible that for some colleagues there would be insufficient time to be productive in the office prior to other appointments but for the claimant there was

sufficient time. The comparator is someone who lived in the same location as the claimant with the same appointment. Therefore, there has been no less favourable treatment and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.25 On 1 March 2018 Mr Bonas emailed Trevor Brown saying that he was reluctant for the claimant to secure full employment rights*

293. This did happen. The appropriate comparator is a Caucasian colleague who has been on a fixed term contract since 2014 and in respect of whom there have been performance issues.

294. Two members of the Tribunal panel concluded that this comparator would have been treated in the same way as the claimant, and felt that Mr Bonas was motivated by trying to get out of having to address tricky performance issues, given that it was only two weeks earlier that performance conversations took place. In that scenario, there would be no less favourable treatment and the claim must therefore fail.

295. One member of the panel concluded that the comparator would not have been treated in the same way, and felt that Mr Bonas was influenced by having seen the emails dated 12 September 2017 and 17 October 2017 which we have found to be discriminatory. However, given that the majority view of the panel was that this was motivated by the performance concerns and a comparator would have been treated in the same way, the claim for less favourable treatment fails. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*2.26 On 7 August 2020 Ms Sabin asked the claimant to contact HR to confirm her last day of employment*

296. This did happen, however we have found that this was due to a genuine misunderstanding of the process to follow. A Caucasian colleague in materially the same circumstances, being someone who had just resigned, would have been treated in the same way and there has been no less favourable treatment. The claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred. The burden of proof does not shift to the respondent and the claimant's claim in this regard fails.

*Conclusion: Direct Discrimination*

297. As set out above, there are only two occasions where we have found that less favourable treatment occurred: allegations 2.6 and 2.7. In those two cases the burden of proof was shifted to the respondent to show that discrimination did not occur, and they were unable to do so.

298. Other than the allegations at 2.6 and 2.7, we have concluded (by majority in respect of two allegations, unanimously in respect of all others) that there was no less favourable treatment.

299. We would note that we accept that there was a general perception amongst a number of the claimant's colleagues that the claimant was being unfairly picked on, and we find that the claimant herself did not always understand why she was being treated in the way she was due to poor communication on the respondent's part. However, having examined the evidence, we have concluded that the reason for the treatment was (save for the two specific points at 2.6 and 2.7) unrelated to the claimant's race and was for other reasons, often because of the claimant's timekeeping, performance issues, question marks as to whether she worked to her full potential when working from home and concerns about honesty - which her colleagues would not have been aware of.

Victimisation

*5 Did the claimant do a protected act by doing the following:*

*5.1 In 2018 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination*

300. We have found that the claimant did have a discussion with Mr Brown during which she complained of what she saw as unfair treatment, however we have also found that she did not reference race discrimination. We recognise that section 27 of the Equality Act 2010 does not require an express allegation to be made however it does require an allegation of some sort in connection with the Equality Act, and we conclude that there was no such allegation. This was therefore not a protected act.

*5.2 On 15 February 2018 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination*

301. On this particular date we have found that there was no complaint to Mr Brown at all. There was no protected act as alleged.

*5.3 On 19 October 2018 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination*

302. First, we note that the conversation to which this allegation refers actually took place on 18 October 2018. Regardless, again we find that whilst the claimant did make a complaint about unfair treatment on this date, she did not make an allegation of race discrimination or an allegation in connection with the Equality Act 2010. This was therefore not a protected act.

*5.4 On 11 September 2019 the claimant made a verbal complaint to Mr Trevor Brown that she was the victim of race discrimination*

303. This was the first of two conversations which took place as part of an ongoing discussion with Mr Brown, the second happening on 18 September 2019. However, neither of these conversations referenced race or anything in connection with the Equality Act 2010 and therefore, as with the other allegations, this was not a protected act.

304. We have therefore concluded that none of the matters set out in issue 5 were protected acts and therefore the claimant's claim for victimisation must fall. However, for completeness we address the other issues below so that

the parties can understand what the Tribunals conclusions are on the specific factual allegations made.

*6 Did the claimant do a protected act in bad faith?*

305. Had any of the conversations referenced above amounted to protected acts, we would have concluded that they were not made in bad faith. We have seen no evidence to suggest that the claimant did not genuinely believe that she was being treated unfairly.

*7 Did the respondent do the following things (as set out below)?*

*8 If so, did these things amount to a detriment?*

*9 If so, was the Claimant subjected to any or all of these detriments because she had done a protected act or acts?*

*7.1 On 24 October 2020 Mr Trevor Brown refused to allow the claimant's Dignity and Work complaint to proceed to stage two*

306. The date quoted here appears to be incorrect as by this time the claimant had already left employment and we are not aware of any correspondence about the matter following 5 October 2020. However, we have considered this as a general allegation for completeness.

307. Mr Brown did refuse to allow the claimant's DAW complaint to proceed to stage two and this was a clear detriment to her. However, we conclude that he did this because he was following (incorrect) HR guidance. Therefore, he would have treated a Caucasian colleague who had raised a similarly worded complaint in the same manner and the claimant has not shown facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination has occurred.

*7.2 Between December 2019 – March 2020 a manager, Ms Natasha Sabin questioned whether the claimant should be allowed to carry leave forward*

308. This has been addressed above.

*7.3 On 25 February 2020 Mr Bonas presented everyone at a meeting (including the claimant) with the respondent's code of conduct*

309. It is admitted that Mr Bonas shared the code of conduct with the team. We have found that this occurred because of a discussion amongst the team about team dynamics and that it was sent to everyone, not just the claimant. We do not consider that this was done because she had complained of discrimination, or because she had raised a DAW complaint. We conclude that the claimant was treated in the same way as her colleagues and that the sharing of the code of conduct was unrelated to any treatment that the claimant had received and was not an act of discrimination. There was no detriment.

*7.4 Between 17 February 2020 – 6 March 2020 Mr Bonas and Ms Dawn Roberts refused to allocate another manager to the claimant and insisted that she must have her supervisions with Ms Sabin*

310. Mr Bonas and Mrs Roberts did indeed refuse to allocate another manager to the claimant. There was no requirement on them to do so (although we think it would have been prudent in the circumstances to have at least considered it).

311. Two of the Tribunal panel have concluded that they would have treated a Caucasian colleague in the same manner. One of the Tribunal panel however felt that actually a colleague would have been given a different manager, on the basis that matters were by that time prompted by personal dislike for the claimant. However, in any case, there was no protected act and therefore this claim must fail.

*7.5 Between 9 March 2020 – 16 March 2020 Ms Sabin refused to allow the claimant to work from home*

312. This has been addressed above.

*7.6 On 4 March 2020 Ms Sabin forced the claimant to have a supervision meeting with her even though the claimant had complained about her*

313. We have found that no variation was made to the claimant's supervision arrangements in light of her DAW complaint. Two of the panel have concluded that, whilst we disagree with the course of action taken by the respondent in the circumstances, we find it was due to the respondent's poor implementation of the Dignity at Work process and insistence on moving forward in their own manner of choosing (seeking mediation) and that they would have treated a Caucasian colleague in the same way. One member of the panel however felt that a comparator would have been granted a different manager. In any case, there was no protected act and this allegation must therefore fail.

*7.7 On 22 June 2020 Mr Trevor Brown tried to pressurise the claimant into attending a mediation meeting in relation to her Dignity at Work complaint*

314. Mediation was certainly offered to the claimant on several occasions, and she was denied any alternative mechanism of resolving her complaint. We can understand why the claimant felt pressurised by this. However, we also conclude that a Caucasian colleague would have been treated in the same way.

*7.8 The respondent (Mrs Dawn Roberts) refused to investigate the claimant's grievance raised on 12 August 2020*

315. We conclude that there was no refusal as such, it was simply that she did not investigate it. She said that she wanted to explore whether to reopen the claimant's DAW complaint first, by reviewing the additional material the claimant had referred to, and her letter dated 5 October 2020 left open the possibility of it being investigated depending on what happened with that material. The claimant did not provide this material and there was therefore no refusal.

*7.9 On 1 March 2018 Mr Bonas emailed Trevor Brown saying that he was reluctant for the claimant to secure full employment rights*

316. We have addressed this above.

*7.10 On 7 August 2020 Ms Sabin asked the claimant to contact HR to confirm her last day of employment*

317. We have addressed this above.

318. The claimant's claims for victimisation therefore do not succeed.

Time Limits

319. We therefore turn to consider time limits in respect of the two allegations which have succeeded, namely 2.6 and 2.7.

*Whether the claim was made within three months (allowing for any early conciliation extension) of the act complained of*

320. The acts took place on 12 September 2017 and 17 October 2017 respectively and it is accepted that the claim was made a number of years later, in 2021. This is not therefore a claim where the matters took place slightly over three months earlier, but significantly so.

*If not, whether there was conduct extending over a period*

*If so, whether the claim was made within three months (allowing for any early conciliation extension) of the end of that period*

321. We conclude that these two acts were isolated acts, not a continuing pattern of affairs. There was therefore no conduct extending over a period.

*If not, whether the claims were made within such further period as the tribunal thinks is just and equitable. The tribunal will decide:*

- *Why the complaints were not made in time*

- *In any event, whether it is just and equitable in all the circumstances to extend time*

322. The Tribunal notes first of all that, although the emails in question were sent on 12 September 2017 and 17 October 2017 respectively, the claimant was not a recipient of those emails at that time and therefore could not have been aware of them. The claimant became aware of the emails through her DSAR request. We do not know the exact date when the documents were provided to her as her DSAR was responded to in several phases and we do not know which phase these emails fell into, however, we know that the DSAR was requested in October 2019 and the documents received at some point between February 2020 and May 2020 (when she referenced having received documents to Mrs Roberts).

323. No reason has been provided to the Tribunal for why the claim was not brought within three months plus early conciliation extension of the date when the claimant had sight of those emails, other than that the claimant was doing what her union representative had told her to do.

324. We also take account of the fact that Mrs Roberts had asked the claimant to send her the relevant DSAR documentation for consideration, and the claimant had not done so. Therefore, at the relevant time, there was no internal process ongoing to consider these emails.

325. We also take into account that, whilst the claimant was not aware of the emails in 2017, it is nevertheless the case that the respondent has been required to give evidence on them almost six years later, in 2023 and therefore the cogency of their evidence may have been affected by the delay.

326. We bear in mind that, whilst the Tribunal has discretion to extend time, this should be the exception and not the rule. Taking into account all of the circumstances, we have concluded that it would not be just and equitable to extend time, particularly given that from May 2020 at the latest the claimant could have taken the matter further both internally and with the Tribunal and did not do so until she started early conciliation on 31 December 2020. The claims were not made within such period as the Tribunal thinks is just and equitable.

**Employment Judge Edmonds**

**Date: 10 October 2023**