



EMPLOYMENT TRIBUNALS

Claimant

Respondent

(1) Mrs H Uwimana; and
(2) Miss S Fenna

v

Amicus Trust Limited

Heard at: Norwich (by CVP)

On: 18, 19, 20, 21, 25 and 26 September 2023

In Chambers: 26 and 27 September, 5 and 6 October 2023;

Before: Employment Judge M Warren

Members: Ms S Elizabeth and Mr C Grant

Appearances

For the Claimants: Mr R Magara, Solicitor Advocate

For the Respondent: Ms C Jennings, Counsel

RESERVED JUDGMENT

1. The claims of the First Respondent, Mrs H Uwimama, of harassment related to race and sex, and of victimisation, succeed.
2. The claims of the First Respondent of disability discrimination, (reasonable adjustments) direct race and direct sex discrimination each fail and are dismissed.
3. The claims of the Second Respondent, Miss S Fenna, of harassment related to race and victimisation succeed.
4. The claims of the Second Respondent of direct associative race discrimination, direct sex discrimination and harassment related to sex each fail and are dismissed

REASONS

Background

1. Mrs Uwimana was employed by the Respondent between 20 October 2020 and 16 June 2021. After Early Conciliation between 25 June and 15 July 2021, she issued these proceedings on 9 August 2021 claiming direct race discrimination, direct sex discrimination, harassment related to race, harassment related to sex, victimisation and disability discrimination by reason of failure to make reasonable adjustments.
2. Miss Fenna was employed by the Respondent between 14 March and 11 June 2021. After Early Conciliation between 18 June and 27 July 2021, she issued these proceedings on 9 August 2021 claiming direct associative race discrimination, direct sex discrimination, harassment related to race, harassment related to sex and victimisation.
3. Mrs Uwimana describes her race for the purposes of these proceedings as black. Miss Fenna is white.
4. Both Claimant's rely upon amended particulars of claim, in response to which there are further grounds of resistance.
5. The case came before Employment Judge Dobbie for Case Management on 28 July 2022, at which this Final Hearing was set down. The parties had agreed a List of Issues which was not before Judge Dobbie at the Preliminary Hearing. The Employment Judge made some observations in the Hearing Summary. At the outset of this hearing, we were presented with two agreed List of Issues, one for each of the Claimants, (see below).
6. Case Management Orders were made, including for disclosure of evidence in relation to Mrs Uwimana's alleged disability and the usual case management orders for this Final Hearing. Unusually in my experience, provision was made for the late exchange of witness statements, which was just over a month ago and more than a year after the Preliminary Hearing, on 7 August 2023, (see below).
7. At some point, it is not clear to us when, the Respondent conceded that Mrs Uwimana is and was at all material times, disabled by reason of PTSD. However, the Respondent denies that it had knowledge of the disability.

The Issues

8. As referred to above, we were provided with an Agreed List of Issues at the outset of the hearing; one in respect of each of the Claimants. Those are set out below by way of cutting and pasting, which includes retaining the original numbering and formatting.

9. During the course of the hearing, Mrs Uwimana withdrew the allegation that on 21 May 2021 Ms Park had told her that a black colleague who had been chased by a Service User was at fault because he can't speak English. That appeared as allegations under the heading 'Direct Race Discrimination' and 'Harassment related to Race'. The allegation was withdrawn because Mrs Uwimana separately alleges that Mrs Williams made that remark.

Mrs Uwimana's List of Issues:

A. **DIRECT RACE DISCRIMINATION**

1. The Claimant relies on the race of Black. The comparators the Claimant relies upon are White/Caucasian colleagues.
2. Did the Respondent treat the Claimant less favourably than it treated or would have treated others? The alleged less favourable treatment is as follows:
 - a. On 17 December 2020, the Claimant being asked what was "*going on*" as her "*hair was like a bush and a forest*" and Mr Kingsbury standing uncomfortably close to her, touching her hair and stating, "*It's more of a bird's nest*".
 - b. On 18 December 2020:
 - i. Ms Williams telling the Claimant, "*I like your wig*" and later touching and inspecting the Claimant's hair to see if it was real;
 - ii. Being told she had a "nice wig";
 - iii. Being called loud and aggressive.
 - c. On 8 February 2021, The Claimant spoke to Jaydine Levi who disclosed that she had been referred to as '*King Kong*' and '*the Nutty Professor*' raised the issue with Mr Kingsbury shrugged off her complaints;
 - d. In early March 2021:
 - i. Being told by the Respondent's clients in front of Mr Kingsbury that they did not trust her and asked if she had been to school, if she could read and if there were "*schools in Africa*";
 - ii. Being read aloud to in a condescending manner by the Respondent's clients in front of Mr Kingsbury.
 - e. During the Claimant's employment with the Respondent, being called a "*nigger*", and being told she can't be seen when it is night (because of the colour of her skin) as per paragraph 13 of the Amended Particulars of Claim.
 - f. In the days following 10 April 2022, Ms Williams telling the Respondent's clients to "*be careful or you will be branded a racist*" and stating in front of colleagues and clients alike, "*these people just come to our country; we give them jobs, and then they just complain and call us racists*".

- g. In mid-late April, the Claimant was asked by one of the Respondent's clients if she was eating giraffe meat for lunch. Ms Williams added that the client would be "*in trouble now*" and would be "*branded a racist*".
 - h. On 20th May 2021 following a complaint made against her by Mrs Uwimana, Ms Williams stating:
 - i. That she was "*fucking paranoid*", that she was "*a bitch*" and that everyone was "*bored of [her] accusations*".
 - ii. That she should, "*fuck off and go back to where [she] came from*".
 - iii. "*Say something, you fucking bitch. Oh, Michael is not here so you've got nothing to say?*"
 - i. On 20th May 2021, Mr Kingsbury leaving the office room while Ms Williams was berating the Claimant as above.
 - j. On 20 May 2021, Mr Kingsbury returning to the office after Ms Williams had left and began joking about the incident above.
 - k. On 21 May 2021, being subject to a meeting raised due to Ms Williams' complaint against the Claimant as opposed to the Claimant's grievances raised about (amongst other things) racism.
 - l. On 21 May 2021, being told by Ms Park that a black colleague who was chased by one of the Respondents was probably at "*fault as he can't even speak English*". **Withdrawn**
3. If so, was any such less favourable treatment because of race?

B. DIRECT SEX DISCRIMINATION

1. The Claimant is a woman. The comparators the Claimant relies upon are her male colleagues.
2. Did the Respondent treat the Claimant less favourably than it treated or would have treated others? The alleged less favourable treatment is as follows:
 - a. On 12 May 2021, Ms Williams stating that a service user who had made an inappropriate gesture was '*just being silly*' and to '*brush it off*';
 - b. On 14 May 2021, the Respondent telling Ms Uwimana not to make a formal complaint about that service user as per paragraph 17 of the Amended Particulars of Claim;
 - c. On 21 May 2021 during a meeting with Ms Park and HR, being told that the service user "*fancies [you] and that is why he did it*".
3. If so, was such less favourable treatment because of the Claimant's sex?

C. HARASSMENT RELATED TO RACE

1. Did the Respondent engage in the following unwanted conduct:
 - a. On 17 December 2020, the Claimant being asked what was "*going on*" as her "*hair was like a bush and a forest*" and Mr Kingsbury standing

- uncomfortably close to her, touching her hair and stating, *"It's more of a bird's nest"*.
- b. On 18 December 2020:
 - i. Ms Williams telling the Claimant, *"I like your wig"* and later touching and inspecting the Claimant's hair to see if it was real;
 - ii. Being told she had a "nice wig";
 - iii. Being called loud and aggressive.
 - c. On 8 February 2021, having spoken to Jaydine Levi who had disclosed that she had been referred to as *'King Kong'* and *'the Nutty Professor'* raised the issue with Mr Kingsbury shrugged off her complaints;
 - d. In early March 2021:
 - i. Being told by the Respondent's clients in front of Mr Kingsbury that they did not trust her and asked if she had been to school, if she could read and if there were *"schools in Africa"*;
 - ii. Being read aloud to in a condescending manner by the Respondent's clients in front of Mr Kingsbury.
 - e. In mid-March 2021, Ms Williams describing a black maintenance man as *"useless"* and saying that *"he can't even speak English. I don't know why they employ him"* and that it was *"partly his own fault as he can't even speak English"*.
 - f. On or around the week commencing 22 March 2021, Ms Williams describing a client as a *"fucking black bitch"* and a *"stupid black bitch"*;
 - g. During the Claimant's employment with the Respondent, being called a *"nigger"*, and being told she can't be seen when it is night (because of the colour of her skin) as per paragraph 13 of the Amended Particulars of Claim.
 - h. In the days following 10 April 2022, Ms Williams telling the Respondent's clients to *"be careful or you will be branded a racist"* and stating in front of colleagues and clients alike, *"these people just come to our country; we give them jobs, and then they just complain and call us racists"*.
 - i. In mid-late April, the Claimant was asked by one of the Respondent's clients if she was eating giraffe meat for lunch. Ms Williams added that the client would be *"in trouble now"* and would be *"branded a racist"*.
 - j. In or around May 2021, Ms Williams had commented that if Mr Kingsbury *"put two black women on the same shift no residents will turn up"*.
 - k. On 20th May 2021 following a complaint made against her by Mrs Uwimana, Ms Williams stating:
 - i. That she was *"fucking paranoid"*, that she was *"a bitch"* and that everyone was *"bored of [her] accusations"*.
 - ii. That she should, *"fuck off and go back to where [she] came from"*.
 - iii. *"Say something, you fucking bitch. Oh, Michael is not here so you've got nothing to say?"*

1. On 20th May 2021, Mr Kingsbury leaving the office room while Ms Williams was berating the Claimant as above.
 - m. On 20 May 2021, Mr Kingsbury returning to the office after Ms Williams had left and began joking about the incident above.
 - n. On 21 May 2021, being subject to a meeting raised due to Ms Williams' complaint against the Claimant as opposed to the Claimant's grievances raised about (amongst other things) racism.
 - o. On 21 May 2021, being told by Ms Park that a black colleague who was chased by one of the Respondents was probably at "*fault as he can't even speak English*". **Withdrawn**
2. If so, did the unwanted conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In determining whether the conduct had such an effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct complained of to have that effect.
 3. If so, was the unwanted conduct related to race?

D. HARASSMENT RELATED TO SEX

1. Did the Respondent engage in the following unwanted conduct:
 - a. On 12 May 2021, Ms Williams stating that a service user who had made an inappropriate gesture was '*just being silly*' and to '*brush it off*';
 - b. On 14 May 2021, the Respondent telling Ms Uwimana not to make a formal complaint about that service user as per paragraph 17 of the Amended Particulars of Claim;
 - c. On 21 May 2021 during a meeting with Ms Park and HR, being told that the service user "*fancies [you] and that is why he did it*".
2. If so, did the unwanted conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In determining whether the conduct had such an effect, the Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct complained of to have that effect.
3. If so, was the unwanted conduct related to sex?

E. VICTIMISATION

1. Did the Claimant do a protected act? The Claimant relies on the following alleged acts:

- a. On 8 February 2021, raising a complaint to Mr Kingsbury regarding the racist comments made to and about a colleague, Jaydine Levy as per paragraph 7 of the Amended Particulars of Claim;
 - b. Around 4 April 2021 to 10 April 2021, telling Mr Kingsbury that her recent hospital admission was triggered by her experiences while working for the Respondent;
 - c. On 10 April 2021, sending an email to Mr Kingsbury, Ms Williams (copying in Ms Fenna) regarding the racist encounters and degrading treatment she had experienced while working for the Respondent;
 - d. On 12 May 2021, raising a grievance to the Respondent regarding an inappropriate gesture made to her by one of the Respondent's clients as per paragraph 17 of the Amended Particulars of Claim;
 - e. On 17 May 2021, raising a grievance to the Respondent regarding the sexual and racial discrimination and harassment she had experienced while working for the Respondent;
 - f. On 19 May 2021, raising complaints regarding the sexual and racial discrimination and harassment she had experienced while working for the Respondent to the Respondent's HR, Catherine Crook;
 - g. On 20 May 2021, the Claimant shared her concerns with Ms Williams about the way confidentiality around her complaint had been handled and spreading rumours about her;
2. If so, was the Claimant subjected to a detriment by the Respondent because she had done a protected act, in any of the following respects:
- a. From mid-April 2021, Ms Williams openly and audibly tell the Respondent's clients that they should *"be careful or you will be branded a racist"* and that *"these people just come to our country; we give them jobs, and then they just complain and call us racists"*.
 - b. In or around mid-April 2021, Ms Williams telling one of the Respondent's clients (who had asked the Claimant if she was eating giraffe meat) sarcastically that he was *"in trouble now"* and would be *"branded a racist"*;
 - p. On 20 May 2021, Ms Williams stating:
 - i. That she was *"fucking paranoid"*, that she was *"a bitch"* and that everyone was *"bored of [her] accusations"*.
 - ii. That she should, *"fuck off and go back to where [she] came from"*.
 - iii. *"Say something, you fucking bitch. Oh, Michael is not here so you've got nothing to say?"*
 - c. On 20 May 2021, Mr Kingsbury joking about the incident involving the Claimant, Ms Williams and Ms Fenna as per paragraph 22 of the Amended Particulars of Claim;
 - d. The Claimant being subject to a disciplinary meeting on 21 May 2021;
 - e. The Claimants raised grievances in the meeting on 21 May 2021 being met with visibly negative and intimidating body language, and her grievances ignored by Ms Park and Ronnie (HR);
 - f. In the days following 21 May 2021:
 - i. the Claimant being subject to a hostile workplace environment;

- ii. the Claimant being told by several of the Respondent's clients that they had been told by the Respondent that she had been "*sacked for being a racist*";
- g. On 3 June 2021, Ms Williams telling service users to make an official complaint about the Claimant;
- h. The Claimant's money records being changed without her knowledge or input on or around 15 June 2021. The change in money records would have raised suspicions of misconduct by the Claimant.

F. FAILURE TO MAKE REASONABLE ADJUSTMENTS

1. The Claimant relies on the disability of post-traumatic stress disorder.
2. Did the Respondent know or could it reasonably have been expected to know that the Claimant was disabled at the material time?
3. Did the Respondent have a PCP that the Claimant's grievances regarding racism or sexism were not to be investigated properly or at all?
4. Did that PCP place the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not sufferers of post-traumatic stress disorder in that:
 - a. The Claimant was more likely (and did as a consequence) to suffer an increased frequency of suicidal thoughts;
 - b. The Claimant was more likely (and did as a consequence) to suffer an increased frequency of mood swings;
 - c. The Claimant was more likely (and did as a consequence) to suffer an increased frequency of violent flashbacks; and
 - d. The Claimant was more likely (and did as a consequence) to suffer an increased frequency of symptoms of depression.
 - e.
5. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?
6. What reasonable steps could have been taken to avoid the disadvantage? The Claimant suggests that the Claimant's grievances could have been investigated properly and in line with the Acas Code of Practice on disciplinary and grievance procedures.
7. Did the Respondent fail to take those reasonable steps?

G. REMEDY

1. If any of the Claimant's complaints are well founded, what compensation is she entitled to receive in respect of:
 - a. Financial loss;
 - b. An award for injury to feelings;
 - c. Aggravated damages
 - d. Damages for personal injury
 - e. Interest

Miss Fenna's List of Issues:

A. DIRECT ASSOCIATIVE RACE DISCRIMINATION

The Claimant relies on the race of Black. The comparators the Claimant relies upon are White/Caucasian colleagues.

1. Did the Respondent treat the Claimant less favourably than it treated or would have treated others? The alleged less favourable treatment is as follows:
 - a. On 20th May 2021, Ms Williams telling the Claimant to “*fuck off*” and throwing an office phone at her; and
 - b. On 20th May 2021, Mr Kingsbury making jokes about the 20 May 2021 incident between the Claimant, Mrs Uwimana and Ms Williams.
3. If so, was any such less favourable treatment because of race?

B. DIRECT SEX DISCRIMINATION

1. The Claimant is a woman. The comparators the Claimant relies upon are her male colleagues.
2. Did the Respondent treat the Claimant less favourably than it treated or would have treated others? The alleged less favourable treatment is as follows:
 - a. On 12 May 2021, Ms Williams stating that a service user who had made an inappropriate gesture was “*just being silly*” and to “*brush it off*”.
3. If so, was such less favourable treatment because of the Claimant's sex?

C. HARASSMENT RELATED TO RACE

1. Did the Respondent engage in the following unwanted conduct:
 - a. Between 14 March 2021 and 31 March 2021, Ms Williams describing a black maintenance man as “*useless*” and saying that “*he can't even speak English. I don't know why they employ him*” and that it was “*partly his own fault as he can't even speak English*”.
 - b. On or around the week commencing 22 March 2021, Ms Williams:
 - i. Stating to Jackie Park, “*don't know why Michael hasn't evicted the stupid black bitch yet, something has to be done about her*”;
 - ii. Describing a client as a “*fucking black bitch*” and a “*stupid black bitch*”;

- c. Ms Carole Williams making derogatory comments to the Claimant about her black colleagues Ms Uwimana and Ms Nyarko as per paragraph 6 of the Amended Particulars of Claim;
 - d. In early April 2021, Ms Williams informing the Respondent's clients that Mrs Uwimana and Ms Nyarko were incompetent, but Mr Kingsbury not reprimanding Ms Williams for this;
 - e. On 10 April 2021, Ms Williams stating that Mrs Uwimana was "*complaining about the white people*";
 - f. On or around the week commencing 12 April 2021, Ms Williams informing the Claimant that she had said (concerning her black colleague Jaydine Levy), "*it was the boys who called Jaydine 'King Kong'. I just laughed and said she looks more like the Nutty Professor*";
 - g. On 12 May 2021, Ms Williams telling the Claimant that Ms Uwimana should leave her job and making derogatory remarks about "*foreigners*" as per paragraph 11 of the Amended Particulars of Claim.
 - h. Around the beginning of the week commencing 17 May 2021 following a complaint made against her by Mrs Uwimana, Ms Williams stating:
 - i. That she would, "*make the stupid bitch pay for it*";
 - ii. That Mrs Uwimana was a racist and "*hates white people*"; and
 - iii. *To the Claimant, "Do you know that fucking Hyacinthe had put in a racial complaint against me?"*;
 - i. In the days following 17 May 2021, the Claimant overhearing comments from the Respondent and its clients, and being told:
 - i. "*Be careful what you say to Sandra*";
 - ii. That she was "*Hyacinthe's best friend*" in a sarcastic/cynical manner;
 - iii. When Mrs Uwimana was not at work: "*Your best friend not working today?*";
 - j. On 20th May 2021, Ms Williams berating Ms Uwimana stating "*You are a fucking racist yourself everyone knows about it. We are bored of you. You think you are better than everyone else. You can fuck off. Go back to your own country – fucking bitch*";
 - k. On 20th May 2021, Ms Williams telling the Claimant to "*fuck off*" and throwing an office phone at her;
 - l. In the days following 21 May 2021, Ms Williams throwing paperwork at the Claimant, speaking to her in a condescending manner and giving her unfriendly glances.
2. If so, did the unwanted conduct have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In determining whether the conduct had such an effect, the Tribunal will take into account the Claimant's

perception, the other circumstances of the case and whether it was reasonable for the conduct complained of to have that effect.

3. If so, was the unwanted conduct related to race?

D. HARASSMENT RELATED TO SEX

1. Did the Respondent engage in the following unwanted conduct:
 - a. On 12 May 2021, Ms Williams stating that a service user who had made an inappropriate gesture was “*just being silly*” and to “*brush it off*”;
 - b. On 14 May 2021, the Respondent telling Ms Uwimana not to make a formal complaint about that service user;
2. If so, did the unwanted conduct have the purpose or effect of violating the Claimant’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In determining whether the conduct had such an effect, the Tribunal will take into account the Claimant’s perception, the other circumstances of the case and whether it was reasonable for the conduct complained of to have that effect.
3. If so, was the unwanted conduct related to sex?

E. VICTIMISATION

1. Did the Claimant do a protected act? The Claimant relies on the following alleged acts:
 - a. Around the beginning of the week commencing 17 May 2021, the Claimant shared her concerns with Ms Williams about the way confidentiality around Ms Uwimana’s complaint had been handled;
 - b. On 20th May 2021, the Claimant told Ms Williams to calm down and stop conducting herself in that way after Ms Williams berated Ms Uwimana;
 - c. On 21 May 2021, the Claimant informed the Respondent that:
 - i. The Claimant had noticed racism in the workplace;
 - ii. The Claimant had been told by Jaydine Levy that Jaydine had experienced racism in the workplace;
 - iii. The Claimant did not believe that Mr Kingsbury had been supportive of staff who were victims of racism or staff who spoke out against racism;
 - iv. The Claimant thought that there was a general severe lack of support within the workplace for staff who were victims of racism or staff who spoke out against racism;

2. If so, was the Claimant subjected to a detriment by the Respondent because she had done a protected act, in any of the following respects:
 - a. From May 2021, the Claimant being subjected to derogatory and sarcastic comments from Ms Williams as per paragraph 15 of the Amended Particulars of Claim;
 - b. On 20 May 2021, Ms Williams telling the Claimant to “*fuck off*” and throwing an office phone at her on 20th May 2021;
 - c. On 21 May 2021, the Claimant receiving unfriendly glances and looks from Ms Park and Ms Williams;
 - d. In the days following 21 May 2021, Ms Williams throwing paperwork at the Claimant, speaking to her in a condescending manner and giving her unfriendly glances.
 - e. On 3 June 2021, Ms Williams telling service users to make an official complaint about the Claimant;
 - f. The Claimant’s suspension on 5 June 2021;
 - g. The Claimant being invited to an investigation meeting on 11 June 2021;
 - h. The Respondent continuing this investigation meeting despite the Claimant sharing her concerns about the investigation process; and
 - i. The Respondent alleging in the investigation meeting that the Claimant had sold or given cannabis/ ‘ash cakes’ to clients.

F. **REMEDY**

1. If any of the Claimant’s complaints are well founded, what compensation is she entitled to receive in respect of:
 - a. Financial loss;
 - b. An award for injury to feelings;
 - c. Aggravated damages
 - d. Damages for personal injury
 - e. Interest

Evidence

10. This hearing was to be as to liability and remedy if time permitted. Unfortunately time did not permit. The Tribunal was unable to sit on Friday 22 September 2023, but as it happens, it would have had insufficient time in any event. The hearing concluded on Tuesday 26 September 2023 and the Tribunal convened in Chambers to consider its decision as to liability on Wednesday 27 September 2023.
11. We had before us witness statement from each of the Claimants and from an additional witness on their behalf, Miss Levy.
12. For the Respondent we had witness statements from Mr K Montgomery, Mrs Carol Williams, Mr Michael Kingsbury and Mrs Jacqueline Park. The

Claimants objected to the Statement from Mr Montgomery. We set out below under a separate heading, the circumstances and our decision in relation to that, which was to allow the evidence of Mr Montgomery.

13. There were difficulties with the Claimants' witness statements:-
 - 13.1. They did not appear to follow any particular logical order. It is usually helpful to the Tribunal for witnesses to tell their story in their witness statement in chronological order;
 - 13.2. In respect of certain key allegations, no evidence was offered at all in the witness statement. As Employment Judge Dobbie explained and set out in the Case Management Order for witness statements, they should contain, "All of the evidence they and their witnesses intend to give at the Final Hearing"; and
 - 13.3. They contain argument in relation to the Respondent's case which really ought to be dealt with by way of cross examination of the Respondent's witnesses and in closing submissions. The witness statements are for evidence from the witnesses, not their arguments or opinion.
14. We had before us a PDF Bundle of documents properly indexed and paginated. It is unfortunate that the documents did not have optical character recognition, as provided for in the President's National and in this Region's own local Directions for remote hearings.
15. At the outset of day 2, the Respondents introduced two further documents without objection: an email from a Cath Crook to Mrs Park dated 19 May 2021 and a First Formal Warning issued to a Service User known as TS dated 23 May 2021.
16. At the outset of the hearing, we adjourned to read the witness statements. We also read or looked at in our discretion, the documents referred to in the witness statements and read certain documents that the Representatives asked us to read during that break. I gave the usual warning to the Representatives to make sure that they took us to relevant passages in the documents during the course of cross examination.
17. I ought to make one further observation with regard to the documents. During closing submissions, Mr Magara sought to refer to documents in the Bundle to which we had not been taken. He thought that anything in the Bundle could be referred to in closing submissions. I explained to him that is not so. The Tribunal does not read all documents in a Bundle, that would clearly be impracticable. In this case the Bundle consisted of 408 pages. The Tribunal only reads and only takes into account, those documents to which it is taken during the hearing of evidence.

Application in relation to the Witness statement of Mr Montgomery

18. On day three on the hearing, 20 September 2023, after hearing the Claimants evidence and before we heard from the Respondents, an issue arose in respect of a hand written statement handed up at the start of the hearing along with all the others, from the Respondents, from a Mr Kevin Montgomery. What I said in giving our recorded decision, is set out below.
19. There is objection from the Claimants to the Tribunal hearing the evidence of Mr Montgomery. It is an objection that we were not aware of until now. To be fair, there has been a misunderstanding and I absolutely accept that it is a misunderstanding, between Mr Magara and me over the status of this statement. It was referred to at the beginning of the hearing, it was acknowledged as being a late statement, both I and Ms Jennings were under the impression there was no objection to it. I made a reference to Mr Magara being able to deal with this statement in his cross examination, by which I was referring to putting to Mr Montgomery questions about why his statement was late and so on. Mr Magara thought that I was suggesting that his objections to the statement could be raised at this later stage. Therefore, a genuine and unfortunate misunderstanding.
20. After a short break, Ms Jennings made an application for the Tribunal to allow the evidence of Mr Montgomery, notwithstanding that it is late. The situation is that the case management orders made on 27 July 2022 somewhat surprisingly, provided for exchange of witness statements on 7 August 2023. We are told that statements were in fact exchanged on 15 August 2023, so just over a month ago.
21. Ms Jennings says that when statements were exchanged, the evidence of the Claimants' witness Miss Levy gave more information and more detail on particular allegations relating to things that are alleged to have been said about her with references to 'King Kong' and the 'Nutty Professor'. In discussing those further allegations, or the further detail of those allegations, in conference with Ms Jennings, the question was raised as to whether the Respondents could call evidence from Service Users. Ms Jennings advised that they could, as a result of which the Respondent obtained this handwritten statement from Mr Montgomery. We are told that the statement was served on the Respondent's representatives last Thursday, 14 September 2023.
22. The statement of Mr Montgomery deals briefly with a number of points that are at issue in the case. That is: references to Mrs Uwimana's hair as being a wig, to the touching of her hair, to references to her eating giraffe meat and to her hearing about what was alleged to have been said of Miss Levy; that is the use of expressions 'King Kong' and the 'Nutty Professor'.
23. The statement does not raise new allegations or information, it deals with existing allegations. Ms Jennings submits that it will further the overriding objective and assist the Tribunal if we allow the evidence. Mr Magara

objects to the late service of the statement and he submits that it puts the Claimants at an unfair disadvantage, observing that they too could have sought other witnesses to assist in the rebuttal of evidence put by the Respondent in their witness statements and as he rightly says, simultaneous exchange of witness statements is ordered for a reason. It is correct that simultaneous exchange of witness statements is ordered for a reason, it is also correct that the Claimants could have approached others if they wished, to provide rebuttal evidence. They could have done that before the exchange of witness statements. It has not been suggested that there is anything new or unexpected in the Respondents witness statements that required or might have resulted in initiation of approaching further witnesses.

24. Mr Magara has expressed concern about us running out of time because, although the case is listed for seven days, we are losing one of those days so we only have six. I have confirmed there is no question that this case will go part heard, I am not concerned about time and we will get through the evidence. We will undoubtedly have to give a reserved decision.
25. Mr Magara himself observed that the statement does not really add much.
26. One point made by Mr Magara which we think is well made, is that the Claimants have not had the opportunity of dealing with Mr Montgomery's statement in their evidence and in part, that results from the misunderstanding between Mr Magara and I at the outset of the hearing.
27. The decision of the Tribunal is that we should allow Mr Montgomery's witness statement, on the basis that it is in accordance with the overriding objective to do so, having regard to the balance of prejudice and to the particular set of circumstances in the late exchange of witness statements and bearing in mind the information provided by Miss Levy in her witness statement.
28. There is no great prejudice to the Claimants other than that which I have just mentioned, which can be overcome if there was a real prejudice, by allowing Mr Magara to call back Miss Fenna and Mrs Uwimana to deal with Mr Montgomery's statement if he wishes. He may, on reflection, not think that necessary, given the content of the statement, but we are happy to give him the opportunity of doing that if he and his clients wish.
29. We took a ten minute break to allow Mr Magara to talk to Miss Fenna and Mrs Uwimana about this issue. After the break, Mrs Uwimana was recalled, answered some supplemental questions from Mr Magara and was cross examined on those answers.

The Law

Direct Discrimination

30. The Claimants says that they were directly discriminated against because of Mrs Uwimana's race. Direct discrimination is defined at s.13(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".

31. Section 23 provides that in making comparisons under section 13, there must be no material difference between the circumstances of the Claimant and the comparator. The comparator may be an actual person identified as being in the same circumstances as the claimant, but not having her protected characteristic, or it may be a hypothetical comparator, constructed by the Tribunal for the purpose of the comparison exercise. The employee must show that she has been treated less favourably than that real comparator was treated or than the hypothetical comparator would have been treated.

32. The leading authority on when an act is because of a protected characteristic is Nagarajan v London Regional Transport [1999] IRLR 572 and in particular, the speech of Lord Nicholls of Birkenhead, (I quote from paragraphs 13 and 17):

"...in every case it is necessary to enquire why the complainant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job? Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator..."

I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn."

33. The protected characteristic does not have to be the only, nor even the main, reason for the treatment complained of, but it must be an effective cause. Lord Nicholls in Nagarajan referred to it being suffice if it was a, “significant influence”:

“Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: 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 or protected acts had a significant influence on the outcome, discrimination is made out.”

34. Detriment was defined in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285; the Tribunal has to find that by reason of the act or acts complained of, a reasonable worker would or might take the view that he or she had been disadvantaged in the circumstances in which he or she had thereafter to work. However, an unjustified sense of grievance does not amount to a detriment.

Associative discrimination

35. Section 13 does not require that a person complaining of discrimination actually has the protected characteristic, but simply that the treatment complained of must be because of the protected characteristic. So it is, that there may be direct discrimination where a person is treated less favourably because of an association in some way, with a protected characteristic. An example apt in this case is given by the Equality and Human Rights Commissions’ Code of Practice on Employment at paragraph 3.20, which explains that direct discrimination could occur if a person were treated less favourably because they had campaigned to help someone else who had a protected characteristic.

Harassment

36. Harassment is defined at s.26:

“(1) A person (A) harasses another (B) if—
(a) A engages in unwanted conduct related to a relevant protected characteristic, and
(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or

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

(4) *In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*

(a) *the perception of B;*

(b) *the other circumstances of the case;*

(c) *whether it is reasonable for the conduct to have that effect.*

(5) *The relevant protected characteristics are—*

...;

race;

...

37. We will refer to that henceforth as the proscribed environment. There are three factors to take into account:

37.1. The perception of the Claimant;

37.2. The other circumstances of the case, and

37.3. Whether it is reasonable for the conduct to have that effect.

38. The conduct complained of that is said to give rise to the proscribed environment must be related to the protected characteristic. That means the Tribunal must look at the context in which the conduct occurred.

39. HHJ Richardson observed in Hartley v Foreign and Commonwealth Office Services UKEAT/0033/15/LA at paragraph 23:

“The question posed by section 26(1) is whether A's conduct related to the protected characteristic. This is a broad test, requiring an evaluation by the Employment Tribunal of the evidence in the round — recognising, of course, that witnesses will not readily volunteer that a remark was related to a protected characteristic. In some cases the burden of proof provisions may be important, ... The Equality Code says (paragraph 7.9):

‘7.9. Unwanted conduct ‘related to’ a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.’ ...”

40. The motivation and thought processes of those accused of harassment may be relevant to the question of whether their conduct amounted to harassment, see Unite the Union v Nailard [2018] IRLR 730 at paragraphs 108 -109.

41. The person complaining of harassment does not have to have the protected characteristic, there simply has to be a connection between the conduct complained and the protected characteristic, that creates the proscribed environment for the person complaining. Thus the ECHR Code of Practice on Employment, at paragraph 7.10 (b) gives as an example [4.91] a situation where a manager abuses a black worker, as a result of which a white colleague is offended; that white colleague has a valid claim of harassment. The prohibited environment is created and the conduct complained of is related to race.
42. Although it was possible between 2008 and 2013 for employers to be liable for harassment related to proscribed grounds, provision for that in section 40 of the EqA has been repealed. Employers may be liable in respect harassment by third parties if there is inaction on their part which is motivated by the proscribed ground. Use of the, “related to” formula is insufficient to find an intention on the part of the employer who is not motivated by the protected characteristic, even if they could have prevented the third parties actions.

Victimisation

43. Section 27 defines victimisation as follows:
- (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;*
 - (d) *making an allegation (whether or not express) that A or another person has contravened this Act.*
 - (3) *Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.*
 - (4) *This section applies only where the person subjected to a detriment is an individual.*
44. The meaning of, “detriment” is explained above.
45. Whether a particular act amounts to victimisation should be judged primarily from the perspective of the alleged victim, whether or not they suffered a “detriment”. However, an alleged victim cannot establish detriment merely by showing that she had suffered mental distress, she has to show that such was objectively reasonable in all the circumstances;

see St Helens Metropolitan Borough Council v Derbyshire [2007] IRLR 540 HL.

46. To be an act of victimisation, the act complained of must be, “because of” the protected act or the employer’s belief. The protected act does not have to be the sole cause of the detriment, provided that it has a significant influence, (see Lord Nicholls in Nagarajan v London Regional Transport [1999] ICR 877 cited above). “Significant influence” does not mean that it has to be of great importance, but an influence that is more than trivial, (see Lord Justice Gibson in Igen v Wong cited below).
47. Section 212, the definitions section of the Equality Act, at subsection (1) provides that, “detriment” does not include conduct which amounts to harassment. This means that it is not possible to have the same conduct defined as direct discrimination and harassment, or victimisation and harassment. One might say that harassment has priority; if the conduct is harassment, it is not a detriment and not therefore either victimisation or direct discrimination.

Burden of Proof

48. Section 136 deals with the burden of proof:
- “(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.*
49. It is therefore for the Claimants to prove facts from which the tribunal could properly conclude, absent explanation from the Respondent, that there had been discrimination. If they do so, the burden of proof shifts to the Respondent to prove to the tribunal that in fact, there was no discrimination. The Appeal Courts guidance under the previous discrimination legislation continues to be applicable in the context of the wording as to the burden of proof that appears in the Equality Act 2010. That guidance was provided in Igen Limited v Wong and others [2005] IRLR 258, which sets out a series of steps that we have carefully observed in the consideration of this case. We will set them out:
- 49.1. It is for the Claimant to prove, on the balance of probabilities, facts from which the Tribunal could conclude, in the absence of an adequate explanation that the Respondent has committed an act of discrimination against the Claimant.
- 49.2. If the Claimant does not prove such facts, she will fail.

- 49.3. It is important to bear in mind that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit discrimination even to themselves.
- 49.4. The outcome, at this stage, of the analysis by the Tribunal will, therefore, depend upon what inferences it is proper to draw from the primary facts found by the Tribunal.
- 49.5. At this stage the Tribunal does not have to reach a definitive determination that such facts would lead to the conclusion that there was an unlawful act of discrimination. At this stage the Tribunal is looking at the primary facts proved by the Claimant to see what inferences of secondary fact could be drawn from them.
- 49.6. In considering what inferences or conclusions can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.
- 49.7. These inferences can include, in appropriate cases, any inferences that are just and equitable to draw from evasive or equivocal replies to questionnaires.
- 49.8. Likewise, the Tribunal must decide whether any provision of any relevant Code of Practice is relevant and if so to take it into account. This means that inferences may also be drawn from any failure to follow a Code of Practice.
- 49.9. Where the Claimant has proved facts from which conclusions could be drawn, that the Respondent has treated the Claimant less favourably on the prohibited grounds, then the burden of proof moves to the Respondent.
- 49.10. It is then for the Respondent to prove that it has not committed the act.
- 49.11. To discharge that burden of proof it is necessary for the Respondent to prove, on the balance of probabilities, that the prohibited ground in no sense whatsoever influenced the treatment of the Claimant, (remembering that the test now is whether the conduct in question was, "because of" the prohibited ground – see Onu v Akwivu referred to above).
- 49.12. The above point requires the Tribunal to assess not merely whether the Respondent has provided an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the prohibited ground was not a ground for the treatment in question.

- 49.13. Since the facts necessary to prove an explanation would normally be in the possession of the Respondent, the Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.
50. This does not mean that we should only consider the Claimant's evidence at the first stage; Madarassy v Nomura International plc [2007] IRLR 246 CA is authority for the proposition that a Tribunal may consider all the evidence at the first stage in order to make findings of primary fact and assess whether there is a *prima facie* case; there is a difference between factual evidence and explanation.
51. In Hewage v Grampian Health Board [2012] UKSC 37 Lord Hope of Craighead said:
- "It is important not to make too much of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."*
52. Having said that, HHJ Tayler cautioned in Field v Steve Pye and Co limited & Others [2022] EAT 68:
- "Although it is legitimate to move straight to the second stage, there is something to be said for an employment tribunal considering why it is choosing that option "*
53. In essence, one may as well set out the reasoning in the two stages as simply going straight to and accepting the Respondent's explanation.
54. In Commissioner of Police of the Metropolis v Denby UKEAT/0314/16 Kerr J said, (quoting Lord Nicholls in *Shamoon*) that sometimes the reason for the treatment is intertwined with whether the Claimant was treated less favourably than a comparator such that, *"the decision on the reason why issue will also provide the answer to the less favourable treatment issue"*.

Reasonable Adjustments

55. Section 20 defines the duty to make reasonable adjustments, which comprises three possible requirements, the first and third of which might apply in this case set out at subsection (3) as follows:-
- "(3) The first requirement is a requirement, where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not*

disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage

56. Section 21 provides that a failure to comply with such requirement is a failure to make a reasonable adjustment, which amounts to discrimination.
57. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases of Environment Agency v Rowan [2008] IRLR 20 and HM Prison Service v Johnson [2007] IRLR 951). The Tribunal must identify:
 - 57.1. The relevant provision criterion or practice applied by or on behalf of the employer;
 - 57.2. The identity of non-disabled comparators, (where appropriate);
 - 57.3. The nature and extent of the substantial disadvantage suffered by the disabled employee;
 - 57.4. The steps the employer is said to have failed to take, and
 - 57.5. Whether it was reasonable to take that step.
58. The employer will only be liable if it knew or ought to have known that the Claimant was disabled and that she was likely to be affected in the manner alleged, see Schedule 8 paragraph 20 and Wilcox v Birmingham CAB Services Ltd EAT 0293/10 where Mr Justice Underhill said of the equivalent provision in the Disability Discrimination Act 1995 that an employer will not be liable for a failure to make reasonable adjustments unless it has actual or constructive knowledge both that the employee was disabled and that he or she was disadvantaged by the disability.
59. The Equality and Human Rights Commission: Code of Practice on Employment (2011) at paragraph 4.5 suggests that PCP should be construed widely so as to include for example, formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. It may also be a decision to do something in the future or a one off decision.
60. The decision of Mrs Justice Simler DBE, (then President) in Lamb v the Business Academy Bexley UKEAT/0226/JOJ assists with identifying what is and what is not, a PCP. The phrase is to be construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer from disability. It may in certain circumstances include one-off decisions, (paragraph 26). She approved though, the comments of the former President, Langstaff J in Nottingham City Transport Ltd v Harvey UKEAT/0032/12 where he referred to, "practice" as having an element of repetition. In the former case, a teacher was dismissed after a long period of absence during which a grievance was investigated and an outcome

provided. The PCP was the requirement to return to work without a proper and fair investigation. There were repeated failures to properly investigate and repeated delays; that was a practice. In the latter case, a claimant suffering from depression, returning to work and confused by a new swipe card system, altered his time sheet. The EAT held that the one-off application of a flawed disciplinary procedure did not amount to a, "practice". More recently in Ishola v Transport for London 2020 EWCA Civ 112, CA, Lady Justice Simler, (as she now is) affirmed that approach, the Court of Appeal holding that the words provision criterion or practice carry the connotation of a state of affairs indicating how similar cases will be treated in the future; a one off act can amount to a practice if there is some indication that it would be repeated if similar circumstances were to arise in the future.

61. It is important for the claimant to identify the PCP relied upon and for the Tribunal to make its decision on the PCP advanced by the claimant, see Secretary of State for Justice v Prospero UKEAT/0412/14.

Credibility

62. This was a difficult case. There are serious allegations of overt racism against individuals on the one hand, vehemently denied and on the other hand, vehemently asserted. Not only are the oral accounts on both sides diametrically opposed, there was very often corroborative evidence for and against each party's case.
63. Many of the allegations made by Mrs Uwimana are against Mrs Williams. They were on good terms, evidenced by the content of WhatsApp messages to which we were referred and a Christmas gift of flowers from Mrs Uwimana to Mrs Williams. We had to ask ourselves whether it is really likely that Mrs Williams would have said and done the things of which she is accused against Mrs Uwimana when they were apparently, on such good terms. Mrs Uwimana points out that the amiable messaging is initiated by her, she says because she was trying to fit in and build good working relationships. She points out that her messaging and her gift, were not reciprocated. Mrs Williams responds that she would reply to the messages by telephoning Mrs Uwimana rather than messaging a reply, because she has Dyslexia. That was new evidence given in cross examination and does not appear to be borne out by Mrs Williams written work and entries in her diary. Mrs Williams explains the lack of a reciprocal Christmas gift by the fact that she could not afford to give Christmas gifts to work colleagues.
64. Mrs Uwimana and Miss Fenna were friends. They were formerly colleagues in employment elsewhere. It is possible that in their bringing their claims together at the same time, they are seeking to corroborate each other's case so as to achieve a favourable financial outcome rather than that there is any substantial truth in the allegations they rely upon.

65. Miss Levy is also a friend and former colleague of Mrs Uwimana. The same might be said of her and her corroborative evidence; is she seeking to bolster the claim of her friend and help her achieve a successful financial outcome, rather than that there is any truth in the allegations she makes?
66. Miss Fenna resigned after she faced allegations that she had slapped a Service User sufficiently hard to cause a red mark on his skin and that she had provided cakes containing cannabis, ("*Hash Cakes*") to Service Users. It may be that she is bitter, she has an axe to grind and is supporting Mrs Uwimana by way of revenge.
67. One of the allegations in this case relates to the manner in which the Respondents dealt with Mrs Uwimana's complaint about a crude and offensive hand gesture made towards her. The precise nature of that hand gesture is made perfectly clear by Mrs Uwimana in an email that she sent to the Respondents on 12 May 2021, (page 248) and yet the Respondent's witnesses appear to seek to play this down and plead ignorance, suggesting that there had been a slightly different hand gesture, which is not crude.
68. Miss Fenna attended an Investigatory Meeting on 11 June 2023. She secretly recorded that meeting and a transcript is produced in the Bundle, (page 325). It has not been suggested to us that this transcript is inaccurate. We note that the transcript begins with a clear statement by the Respondent's HR Manager, Miss Cath Crook: the Respondent does not permit recordings of meetings. Miss Fenna confirmed that she was not recording it. One wonders in this day and age, why an employer would object to an employee recording a meeting such as this, for a recording will deter an employee from falsely asserting that something had been said that had not been said, or that the hearing had been conducted in a particular manner which was not true. In this case, the clandestine recording reveals significant inaccuracies in the minutes of the meeting subsequently produced by Miss Crook. Those minutes create a false narrative. That casts a shadow not only over the probity of the allegations against Miss Fenna, but also over the reliability of any of the documentation produced by the Respondent. If they are prepared to produce documents presenting a false narrative in respect of Miss Fenna's Investigatory Meeting, might they not also be prepared to do so in respect of any other meeting?
69. We keep in mind that these particular false minutes were prepared by Miss Crook whereas other minutes were prepared by others, but the Respondent cannot escape the question marks this raises over their record keeping.
70. Miss Crook was not called by the Respondents to give evidence. We are told that she has left the Respondent's employment, "under a cloud".

71. We had difficulties and concerns with the evidence of all the witnesses that appeared before us. We will explain those concerns in respect of each of the witnesses in turn.
72. We had the following problems with Mrs Uwimana's evidence:-
 - 72.1. As explained above, her witness statement did not include evidence from her in relation to some of her allegations, for example:
 - 72.1.1. That on 18 December 2020 reference had been made to her wearing a wig and she was accused of being loud and aggressive;
 - 72.1.2. That Mrs Williams on 22 March 2021 had used the expression, "*black bitch*";
 - 72.1.3. That she had complained to Miss Crook about discrimination on 19 May 2021, an alleged protected act,, and
 - 72.1.4. She had been told by residents that she had been sacked for being a racist.
 - 72.2. Her witness statement lacked detail and context in respect of some of the allegations, which diminishes their credibility;
 - 72.3. Mrs Uwimana introduced in cross examination new and serious allegations, including for example:
 - 72.3.1. That Mr Kingsbury had touched her hair, "*many times*";
 - 72.3.2. That Mrs Williams had said that black women wore wigs of white peoples hair and the hair of dead people;
 - 72.3.3. That Mrs Williams had referred to Miss Levy as 'King Kong' or the 'Nutty Professor', "*many times*";
 - 72.3.4. That she had been called the "N" word, (at paragraph 13 of her Amended Particulars of claim she stated that she had not been called by that highly offensive term, which is corroborated in contemporaneous documents);
 - 72.3.5. That Mrs Williams had called her by the, "N" word, "*many times*";
 - 72.3.6. That Mrs Williams, (and not anybody else) had said that she could not be seen when it is night;
 - 72.3.7. That Mrs Williams had said, "*many times*": "*these people just come to our country; we give them jobs, and then they just complain and call us racists*";

- 72.4. When her omissions of detail from her witness statement were drawn to her attention, such as those mentioned in the preceding paragraphs, Mrs Uwimana's answer was that if she put everything in her witness statement, it would be like a book. The evidence she wishes to present to the Tribunal has to be in her witness statement, as her solicitor will well know. The implication of its not being there is likely that it could not be included if she is to confirm in evidence that the contents of her witness statement are true;
- 72.5. Mrs Williams' diary entries contain positive remarks about Mrs Uwimana and her black colleague, which are on the face of it inconsistent with the accusations both Claimants make against her; and
- 72.6. There is an allegation that as an act of victimisation, Mrs Williams made amendments to entries Mrs Uwimana had made in Service Users rent books so as to make it appear that she had been fraudulent. It was clear to the Tribunal that the reverse was true: the entries, or changes, Mrs Williams made which were witnessed by others, were correcting errors and were helpful to Mrs Uwimana.
73. Our problems with Miss Fenna's evidence were as follows:-
- 73.1. Having resigned in circumstances where she faced serious allegations of misconduct from the Respondent, Miss Fenna could certainly be said to have a reason to bear ill will towards the Respondent, which may render her evidence unreliable;
- 73.2. As with Mrs Uwimana, Miss Fenna also came out with new and fresh allegations during cross examination, such as for example:-
- 73.2.1. That Mrs Williams said certain things, (such as her adverse comments about the black maintenance man), *"quite often"*;
- 73.2.2. That Mrs Williams had, *"more than once"* said, (a new allegation), *"silly black bitches don't know what they're doing"*;
- 73.2.3. That Mrs Williams, *"quite often"* referred to Miss Levy as 'King Kong' and the 'Nutty Professor';
- 73.3. There were differences in Miss Fenna's accounts in respect of certain allegations, between the amended particulars of claim, her witness statement and her oral evidence. For example:
- 73.3.1. What was alleged to have been said about foreigners on 12 May 2021;
- 73.3.2. What was said on 20 May 2021; and

- 73.3.3. A change in her account as to whether Mrs Williams had thrown a telephone, or thrown a pager.
74. The only observation we would make about Miss Levy's evidence, (which was quite short) is that she is a friend of Mrs Uwimana.
75. Our problems with Mrs Williams' evidence were as follows:-
- 75.1. At paragraph 60 of her witness statement, Mrs Williams said that by 20 May 2021, she felt ignored and ready to leave her job. That is not consistent with her text message of 17 May at page 293, nor with the fact that there are no diary entries to that effect;
- 75.2. She said in evidence that she does not swear, which seemed implausible, particularly when one had regard to some of her diary entries such as that of 3 February at page 306 and for 24 March page 310;
- 75.3. The suggestion that Mrs Uwimana was laughing at the references to what she was eating as being giraffe meat, is inconsistent with Mrs Uwimana's complaints about racism, by for example, the content of her email of 10 April 2021 at page 247;
- 75.4. As we have mentioned, Mrs Williams professed to believe that the hand gesture by a Service User that Mrs Uwimana was complaining about, was a simple circle created by fore finger and thumb. That is implausible, as one could see from Mrs Uwimana's email at page 248, it is very clearly a much more obscene gesture Mrs Uwimana says was made toward her;
- 75.5. At paragraph 62 of her witness statement, Mrs Williams says that she was bored of Mrs Uwimana's accusations. As she acknowledged in cross examination, the day on which she was bored, 20 May 2021, was the first day that she was accused of racism by Mrs Uwimana;
- 75.6. In cross examination, she denied that she had slammed the phone down during the meeting on 20 May, but acknowledged that it bounced up and out of its cradle, which means it must have been put down with some force;
- 75.7. After the altercation on 20 May, Mrs Williams telephoned Mrs Park. In cross examination, she asserted that she had not told Mrs Park anything about what had happened, which is not plausible;
- 75.8. There is a suggestion that there was, or was proposed, a group hug after a meeting on 21 May 2021. In her diary entry for that

- day at page 317, she wrote that Mrs Uwimana had asked her for a hug and that there was a group hug. In evidence for the first time, she said that Mr Kingsbury had suggested a group hug. Mr Kingsbury in evidence did not agree with that and it is inconsistent with his evidence that he was not, "*touchy feely*";
- 75.9. In being cross examined about discovering the mistakes by Mrs Uwimana in Service Users rent books on 15 June 2021, she said that Miss Fenna had been with her. However, Miss Fenna was suspended on 5 June and indeed resigned on 11 June 2021; and
- 75.10. In her witness statement, (paragraph 84), Mrs Williams states that the Service Users reported to her that Miss Fenna had supplied them with hash cakes. Her diary entry for this is on 2 June 2021, (page 319). Her explanation for this is that it was on the Wednesday, (2 June) that Miss Fenna was reported to have supplied the hash cakes.
76. The following are our observations in relation to the evidence of Mr Kingsbury:-
- 76.1. At paragraph 18 of his witness statement, he states that he does not recall speaking to Mrs Uwimana on her return to work after being taken to hospital. In cross examination, he changed his evidence, he says he did recall speaking to her and asserts that her explanation for going to hospital was anxiety and migraine. He denies that she made any reference to PTSD. It is perhaps implicit in his paragraph 18 that he must have spoken to her, because he refers to recalling that she had been taken to hospital due to anxiety attacks and migraines;
- 76.2. He stated that he was not, "*touchy feeling*", this in the context of being accused of touching Mrs Uwimana's hair. Having heard Mrs Williams in her earlier evidence suggest that Mr Kingsbury had suggested a group hug on 21 May 2021, his response was that he did not recall;
- 76.3. He insisted in cross examination that the gesture about which Mrs Uwimana complained made by a Servicer User was a circle formed by thumb and fore finger. He could not explain why that would upset her so much and he was uncertain or non-committal about whether or not he had encouraged her to complain;
- 76.4. When it was put to him during cross examination that he had made light of the altercation between Mrs Uwimana and Mrs Williams on 20 May 2021, his response was, "*dunno*", which is typical of his apparent attitude to much of the questions put to him in cross examination. His evidence was that he could not

remember very much from that day at all, but he definitely remembered, it seems, that neither Miss Fenna nor Mrs Uwimana had said that the Team Meeting the next day was unfair; and

- 76.5. Mr Kingsbury's answer to many questions were that he did not remember. That may be an honest answer. His evidence is unreliable for his lack of memory.
77. We had the following observations to make in relation to the evidence of Mrs Park:-
- 77.1. In her witness statement, in relation to the investigatory meeting with Miss Fenna on 11 June 2021, she makes her statement based upon the content of the Respondent's minutes of that meeting, notwithstanding that the comments that she refers to, do not appear in the transcript and were therefore not said during the meeting. Thus, she stood by her assertion at paragraph 33 in relation to the hash cake allegation, that Miss Fenna had said, *"This was not true as hash costs money and I would not provide this for free"*. She asserts at paragraph 32 that Miss Fenna admitted saying to the Service User whom she had slapped, *"go make a fucking complaint then"*. Her answer was in cross examination, that recordings can be edited. There is no evidence or suggestion before us prior to that point, that the recording was edited.
78. We make the following observations with regard to the Witness statement of Mr Montgomery:-
- 78.1. As we have already explained, Mr Montgomery's witness statement was served late and in response to that of Miss Levy;
- 78.2. Mrs Williams was his Key Worker, he had known her for a number of years, he acknowledged in cross examination that he had a good relationship with her;
- 78.3. He confirmed in cross examination that he had a bad memory because of his illnesses. He said, *"sometimes I can't remember yesterday"*; and
- 78.4. In his witness statement, (hand written in his own hand), he wrote that when he asked Mrs Uwimana if she had a new wig, she had screamed and shouted at him. In cross examination when asked what had prompted him to ask that question, he said it was just banter, he meant nothing by it and that they both had laughed. He confirmed that she laughed. It was then drawn to his attention that in his witness statement he had written that she had screamed and shouted. His answer to that

was that she sort of laughed at first and then shouted and screamed.

79. It seemed to us that we were faced with unreliable oral evidence from all quarters, with the exception perhaps of Miss Levy. The only question about her was her friendship with Mrs Uwimana and the possibility that she was only giving evidence to bolster her case. On the other hand, it takes quite something to be prepared to come forward and corroborate such allegations, not only in the provision of a witness statement, but also in agreeing to attend court and be cross examined.
80. Troubling for us always, was the apparent tendency of Mrs Uwimana and Miss Fenna, in particular Mrs Uwimana, to exaggerate, to embellish and to appear to come up with answers on the hoof when caught in awkward situations in cross examination.
81. We keep in mind always the quite dreadful experiences recorded in the medical records that gave rise to Mrs Uwimana suffering from PTSD and the impact that may have on the way that she gives evidence.
82. We were troubled throughout by the misleading minutes of the meeting on 11 June 2021 as compared to the transcript of that meeting; what that might say about the reliability of the Respondent's evidence as a whole and the culture within the Respondent organisation.

Findings of Fact

83. The Respondent is a charity providing accommodation and support to homeless people. They run 20 projects over five counties, including Bedfordshire. It had at the time approximately 80 employees and just over 500 Service Users. Annual diversity training is provided to its employees. An Equal Opportunity and Diversity Policy exists on a shared computer drive, accessible by its employees.
84. Mrs Uwimana began working for the Respondent through an agency on 20 October 2020. She became an employee on 1 December 2020. Similarly, Miss Fenna began working for the Respondent through an agency on 14 March 2021 and became an employee on 10 May 2021. They both worked for the Respondent as Housing Management Workers.
85. On 26 November 2020, Mrs Uwimana completed a Pre-Employment Questionnaire, page 200 – 201. On this document she revealed in answer to a question that she has had a mental disorder. Where asked to give more information, she refers to PTSD and in answer to the question about treatment duration wrote, "*past ten years ago*".
86. There was no interview process.

87. Housing Management Workers are each allocated a group of Service Users with whom they work.
88. Mrs Williams was also a Housing Management Worker. She had been employed in that role since November 2018, so she had been there for about two years before Mrs Uwimana joined the Respondent.
89. Mr Kingsbury held the title of Senior Housing Management Worker. He managed the site at which the Claimants worked and was their direct Line Manager.
90. Mrs Park held the role of Operations and Property Manager. She was Line Manager of Senior Housing Management Workers, including Mr Kingsbury.
91. It is in the nature of the good work that the Respondent does, that those who work for it, work in an environment where they will experience inappropriate words and behaviour from Servicer Users, including sexism and racism. It is our overall impression that the Respondent had a tendency, certainly at the location the Claimants and Mrs Williams worked in Sandy, Bedfordshire, to let things happen, (that is, incidents of racism and sexism) and take no action. That informs some of our decision making.
92. It is alleged that on 17 December 2020, Mrs Uwimana was asked what was going on as her hair was like a bush and a forest. It is alleged that Mr Kingsbury standing close to her, touched her hair and said, *"it's more of a bird's nest"*. This allegation is disputed. Mrs Uwimana gives no description of this incident in her witness statement. She refers to it at paragraph 9 but does not explain the circumstances surrounding the alleged incident. She refers to Mr Kingsbury and a Service User touching her hair and referring to it as a bush, a forest and a bird's nest. We note that in her grievance email of 10 April 2021 at page 247, Mrs Uwimana wrote,

"As we work as a team I don't like anyone to ask me if I am wearing a wig, or someone to tell me that my hair looks like a bird nest!! Or joking like you can't see me because it is night."
93. Mrs Uwimana is referring to her team when she recites those remarks, which is corroborative evidence that such remarks were made by members of her team. We think that Mr Kingsbury was being truthful when he said he was not, *"touchy feely"*. We find that the Service User referred to her hair as being like a bush and a forest, that Mr Kingsbury remarked that it was more of a bird's nest, but that Mr Kingsbury did not touch Mrs Uwimana's hair.
94. It is alleged that on 18 December 2020, Mrs Williams told Mrs Uwimana that she liked her wig and later touched her hair to see if it was real, that somebody told her that she had a nice wig and that she was accused of

being loud and aggressive. This allegation is disputed. Mrs Uwimana appears to give no evidence about this incident in her witness statement. In cross examination, she acknowledged that Service User Mr Montgomery said that he liked her hair, asked her if she had a new wig and reached out to touch it. She denied becoming cross with him. On her demeanour it seemed to us quite likely that she did in fact become cross with him. Mr Montgomery's evidence was that he had asked Mrs Uwimana if she had a new wig and that in response, she screamed and shouted at him, which had caused him to become very upset. Mrs Williams denies ever asking Mrs Uwimana if she was wearing a wig or seeking to touch her hair. She says that all she had ever done is comment on how nice Mrs Uwimana's hair looked. She recites the incident involving Mr Montgomery as described. She denies referring to Mrs Uwimana as loud and aggressive. We find that Mr Montgomery, (and not Mrs Williams) told Mrs Uwimana that he liked her wig and reached out to touch it. She became cross with him. Mrs Uwimana was not accused of being loud and aggressive.

95. Over the Christmas of 2020, Mrs Uwimana gave a gift of flowers to Mrs Williams and a bottle of whiskey to Mr Kingsbury.
96. On 8 February 2021, Miss Levy began working for the Respondent as a Housing Management Worker. She was a friend of Mrs Uwimana and was introduced to the Respondents by Mrs Uwimana. Notwithstanding that connection, we have no other reason to disbelieve the evidence of Miss Levy, we found her evidence credible. We recognised that Mr Kingsbury, (aged in his fifties) gives a different account of the conversation with references to the 'Nutty Professor' and no reference to 'King Kong'. It may well be that there was another such conversation, but we accept as alleged by Miss Levy that she overheard a conversation in which Mrs Williams said to Service Users, (one aged about 17 and the other about 25), just after she had walked past them, "*we have two blacks now, this one looks like King Kong*" and in response one of the Service Users said, "*she looks like the Nutty Professor*".
97. Miss Levy left the Respondent's employment the next day, 8 February 2021. Subsequently, she told Mrs Uwimana that the reason that she had left was that she had overheard that conversation. However, it is not clear when that conversation between Miss Levy and Mrs Uwimana took place. Miss Levy does not tell us in her witness statement and in cross examination, she was not clear about when she had that conversation, other than to confirm that it was after she had left her employment with the Respondent.
98. It is alleged that Mrs Uwimana told Mr Kingsbury that the reason Miss Levy had left the Respondent's employment was her overhearing the above remarks and that Mr Kingsbury, "*shrugged off her complaints*". Mr Kingsbury says that he does not recall such a conversation. We find that Mrs Uwimana and Mr Kingsbury did not have a conversation at this time

about why Miss Levy had left, which referred to the reason of that cited above. He did not, “*shrug off her complaints*”.

99. It is alleged that in early March 2021, Service Users, in front of Mr Kingsbury, told Mrs Uwimana that they did not trust her, asked her if she had been to school, if she could read and whether there were schools in Africa. It is also alleged one of them read aloud to her in a condescending manner. Mrs Uwimana gives no evidence about this in her witness statement. In cross examination, she said that these words were spoken by residents and that Mr Kingsbury was there and did nothing. Mr Kingsbury agreed he was present during such a conversation, he said that he did not hear the alleged words and that he intervened to assist Mrs Uwimana in completing a Housing Application for the Service User. We note that in a new document introduced during the course of the hearing, an email from Ms Crook of 19 May 2021, Ms Crook refers to Mrs Uwimana having reported to her comments being made by residents regarding her ability to read. It seemed to us that there was a culture with the Respondent, certainly at Sandy where Mrs Uwimana and Miss Fenna worked, of allowing things like this on the part of Service Users to happen without intervention. We find that these words were spoken, that Mr Kingsbury was standing by and heard them. We find that he spoke to the Service Users about their raising their voices, but not about their inappropriate comments.
100. It is alleged that during her employment, Mrs Uwimana was called by the ‘N’ word. There is no evidence about this in her witness statement. She said for the first time in cross examination that Mrs Williams called her by the ‘N’ word many times, which we found not credible and do not accept. We note that her email grievance of 10 April 2021, (page 247) included the words, “*or just because none [sic] calls me a nigger is ok with you?*”. That is a statement by Mrs Uwimana that nobody has called her by that offensive term. The same words are used in the amended Particulars of Claim. We find that Mrs Uwimana was not called by the ‘N’ word during her employment.
101. Linked to the foregoing in the List of Issues, is an allegation that it was said she cannot be seen when it is night because of the colour of her skin. The wording of the 10 April 2021 email corroborates this allegation. Mrs Uwimana refers to somebody in the team joking that she cannot be seen because it is night. She gives no evidence about this in her witness statement. In cross examination, she said for the first time that the comment was made by Mrs Williams. Mrs Williams denies it. In light of the 10 April 2021 email, we find that somebody in the team made a joke about not being able to see her because it is night, most likely it was Mrs Williams.
102. It is alleged that in mid-March 2021, Mrs Williams described a black maintenance man as, “*useless*” and said of him, “*He can’t even speak English. I don’t know why they employ him*” and that his being chased by a

Service User wielding a knife was, *“partly his own fault as he can’t even speak English”*. It is not suggested that Mrs Uwimana was party to this conversation, albeit that the allegation appears in her List of Issues as well as the List of Issues for Miss Fenna, who claims to have been present and to have heard these words. Miss Fenna says that she heard Mrs Williams make these remarks after watching CCTV footage of an incident when the black maintenance man was chased with a knife by a Service User. She said that Mrs Williams was usually moaning about something to do with him. Mrs Williams acknowledges that the incident occurred and that the individual concerned did not speak good English, but she denies the words attributed to her. The minutes of 21 May 2021 record Mrs Uwimana making reference to two handyman, one of whom is black who was chased with a knife and that there had been complaints about the black handman’s lack of skill. Mrs Park is recorded as confirming there had historically been issues with his performance, attributed to his lack of comprehension of the English language. Informed by our finding that Mrs Williams described Miss Levy as ‘King Kong’, we find that she did use the words attributed to her in this allegation.

103. It is alleged that on 22 March 2021, Mrs Williams stated to Mrs Park in relation to a Service User, *“I don’t know why Michael hasn’t evicted the stupid black bitch yet, something has to be done about her”* and described a Service User as a, *“fucking black bitch”* and a, *“stupid black bitch”*. This is denied. Miss Fenna’s evidence is that she was in the office with Mrs Williams when Mrs Williams received an abusive and aggressive telephone call from the Service User concerned, when Mrs Williams used these words. There is no reference to this in the minutes of the meeting on 21 May. Miss Fenna says there is much that she had said in that meeting that is not included in these minutes and we have reason to doubt the accuracy of the Respondent’s minute taking. We conclude that these words were said by Mrs Williams, but that she did not use the word, “black”.
104. At some point since 9 February 2021, a new Housing Management Worker had joined the Claimants’ team called Miss Nyarko. She is also a black person. It is alleged that Mrs Williams would often make derogatory remarks about Miss Nyarko to or within the hearing of Miss Fenna about Miss Nyarko and Mrs Uwimana, making reference to their hair or the way that they dressed and on one occasion commented, *“these black people think they are so special”*. We find that she did make these remarks.
105. It is alleged that in early April 2021, Mrs Williams told Service Users that Mrs Uwimana and Miss Nyarko were incompetent. Miss Fenna alleges at paragraph 8 of her Witness statement that she commented, *“the other two don’t know what they are doing”* and, *“these fucking black people are fucking useless”*. We find that she did make these remarks.
106. Between 4 and 10 April 2021, Mrs Uwimana was admitted to hospital. She alleges that she had told Mr Kingsbury that this was because she had had a flare up of her PTSD caused by her experiences whilst working for

the Respondent. There is no documentation in relation to this allegation. Mr Kingsbury says at paragraph 18 of his witness statement that he recalls Mrs Uwimana being taken to hospital, he says due to anxiety attacks and migraines, but that he does not recall speaking to her upon her return. He is alleged to have said to Mrs Uwimana, “we all have mental health issues”, he denies that, saying he would not be so flippant about mental health issues. It is astonishing that nobody apparently spoke to Mrs Uwimana on her return to work after being admitted to hospital, but that is not the issue before us. We note that the medical records for Mrs Uwimana that we have in the Bundle relate to July 2022, but it is not disputed that she had a visit to hospital in April 2021. There is nothing in Mrs Uwimana’s witness statement about this. Mr Kingsbury acknowledged in cross examination that there had been a conversation, which is new and a deviation from his witness statement. He said that the conversation was about anxiety and migraines, not about them having been triggered by work. We find that Mrs Uwimana did not say to Mr Kingsbury that her absence had been caused by her experiences working for the Respondent, she did not mention PTSD and he did not make light of mental health issues as alleged.

107. On 10 April 2021, Mrs Uwimana sent an email to Mr Kingsbury and Mrs Williams, copied to Miss Fenna, subject heading ‘PH’, (the name of a Service User). She’d had an altercation with the Service User, he himself had emailed Mrs Williams, the opening of which reads, “I think I may have upset Hyacinth today...”. The detail does not matter, what is significant is that Mrs Uwimana’s email includes the following:-

“People treat me like an object, like stupid and sometimes I expect one of my colleagues to say something but no one cares. People talks about me even when I am listening, or make funny faces.

I wonder why? Do you see it? Or just because none calls me a nigger is ok with you? I don’t expect to be treated the same as everyone else but just a little bit of respect.

As we work as team I don’t like anyone to ask me if I am wearing a wig, or someone to tell me that my hair looked like a bird nest!! Or joking like you can’t see me because it is night.”

108. It is alleged by Miss Fenna that she was in the office when Mrs Williams received this email. She says that she saw and heard Mrs Williams go outside for a cigarette and whilst outside, commented to some Service Users that Mrs Uwimana was complaining about white people. We find that Mrs Williams did make that remark.
109. In mid-April 2021, Mr Montgomery went into a kitchen area where Mrs Uwimana and Miss Fenna were eating. Mr Montgomery asked Mrs Uwimana what she was eating and she replied, “I don’t know, it’s meat from my country”. In response to which Mr Montgomery muttered, “must be giraffe”. It is alleged that Mrs Williams had said, “be careful or you will be

branded a racist” and that Mr Montgomery would be in trouble now and, *“these people just come to our country; we give them jobs, and then they just complain and call us racists”*. Mrs Williams accepted that she had warned Mr Montgomery, she says it was a serious warning, Mrs Uwimana said it was sarcastic. Did Mrs Williams tell other Service Users to be careful or they would be branded a racist? In cross examination Mrs Uwimana said that Mrs Williams said it, *“many times”*. We find that Mrs Uwimana is embellishing and exaggerating and that Mrs Williams said it the once to Mr Montgomery that it was a genuine and serious warning, not sarcasm. For the first time in cross examination, Mrs Uwimana said Mrs Williams made the *“these people...”* remark, *“many times”* and again, we find this is embellishment and that she made no such remark.

110. For a period of time after Miss Levy’s short period of employment with the Respondents, Mrs Uwimana had another black colleague, Ms Nyarko. We find that, as alleged, Miss Fenna did hear Mrs Williams refer to Mrs Uwimana and Ms Nyarko expressing dislike for the way that they dressed and their hair and that she did on one occasion comment, *“these black people think they are special”*.
111. Sometime during early April, Ms Fenna overheard Mrs Williams talking to Service Users and referring to Mrs Uwimana and Ms Nyarko as incompetent saying, *“the other two don’t know what they are doing”*, but not that, *“these fucking black people are fucking useless”* (the latter being an allegation that does not appear in the Particulars of Claim or the List of Issues, but appears for the first time in Miss Fenna’s Witness statement).
112. It is alleged that on 12 April 2021, Mrs Williams told Miss Fenna that in relation to Miss Levy, *“It was the boys who called Jaydine King Kong. I just laughed and said she looks more like the Nutty Professor”*. Mrs Williams denies this. We have already made our finding about what she said was overheard by Miss Levy. In paragraphs 34 – 37 of her witness statement, Mrs Williams recites an incident in which she had a conversation with Service Users, including Mr Montgomery, about DVDs. Miss Fenna’s evidence about the allegation is at paragraph 10. We are aware our finding of what she actually said about Mrs Levy is different, but we find this is what she told Miss Fenna on this occasion.
113. On 12 May 2021, Service User ‘TS’ made a rude gesture towards Mrs Uwimana. Making a circle or okay sign with his fore finger and thumb, he moved the fore finger of his other hand, extended, backwards and forth through the circle. She raised a grievance about this and clearly described the gesture, page 248. The Respondents, (Mr Kingsbury, Mrs Park and Mrs Williams) all suggest that they thought the gesture was a simple okay sign. We accept that it was not and we find these three individuals knew very well that it was not. Mrs Williams in her paragraph 44 says that she did not believe the gesture was intended as Mrs Uwimana interpreted it, (we fail to see how it could be interpreted any other way other than being

highly offensive) and that she said to her 'TS' was, "*just being silly*" and to, "*brush it off*".

114. Mrs Uwimana's complaint was dealt with by a Mr Muir, who was the Respondent's Veterans Liaison Officer. He was a Senior Housing Maintenance Officer, on the same level as Mr Kingsbury. Sadly, Mr Muir is deceased. He was ex-Army and as his job title suggests, was responsible for working with ex-Servicemen Service Users. In a Response dated 14 May 2021 sent to Mrs Park, he dismissed the complaint as, "*squaddie humour*". He also wrote:-

"Following all of this I had a long talk with Carol [Williams] and she basically confirmed my thoughts. I don't think that this Hyacinth will be a good fit for Project 17 in the long run.

All appears to be sorted and Carol has assured me that she will keep an eye on events for me."

115. Mr Muir suggests that Mrs Uwimana had not understood what had happened. We should explain that the Respondent's witness statements assert that, based on information provided to them by Mr Muir, the making of the circle with the hand or the okay sign on its own is part of a game squaddies play. Apparently, that is so, but be that as it may, that is not the gesture that was made to Mrs Uwimana and the Respondent's witnesses knew it.
116. Mrs Uwimana wrote a long written response following a meeting she had with Mr Muir on 14 May 2021. She reports him as suggesting that the sign 'TS' had made was a sign in the Army used between comrades. She explained that Mr Kingsbury had been angry when she showed him the sign that had been made towards her and he had said that some stupid men have no respect for women. We see this as corroborative evidence that Mr Kingsbury knew very well what the gesture was and that he had encouraged Mrs Uwimana to make a complaint. In her letter, she comments, "*why am I the only one who gets these jokes?*" She refers to a black colleague being called 'King Kong' and the 'Nutty Professor'. She refers to Mrs Williams having commented that if Mr Kingsbury put two black women on the same shift together, no residents will turn up, (see below). She argues that the Respondent has to find a way to educate residents about racism.
117. We accept that Mr Kingsbury encouraged Mrs Uwimana to make a complaint about 'TS' but that Mr Muir and Miss Williams urged her not to.
118. It is alleged that sometime during May 2021, Mrs Williams had commented to Mrs Uwimana that if Mr Kingsbury, "*put two black women on the same shift no residents will turn up*". As noted above, Mrs Uwimana made reference to this in her letter to Mr Muir on or about 14 May 2021. She goes on to write, "*what she was saying is true because she knows very well that there is*

obvious racism going on here". The context seems to us that at the time, the remark was understood to be a reference to the actions of the Service Users rather than as a criticism of Mrs Uwimana and Miss Nyarko.

119. It is alleged that on 12 May 2021, Mrs Williams told Miss Fenna that Mrs Uwimana should leave her job and made derogatory remarks about foreigners,

"No one likes her any way... these foreigners think they are something special. Even Juliana – no one likes her or goes to her. She was just lazy sitting on her fucking big ass on the computer. At least she knows how to do that".

We accept that Mrs Williams did say that.

120. During week commencing 17 May 2021, Mrs Park told Mrs Williams about Mrs Uwimana's letter to Mr Muir quoted above. Miss Fenna said she was in the office when Mrs Park told Mrs Williams over the telephone. She says that on putting the telephone down, Mrs Williams said, (paragraph 15 of her witness statement), *"The fucking black bitch has made complaints about me"*, (we note that the words used in Miss Fenna's Particulars of Claim at paragraph 14 are slightly different, *"Do you know that fucking Hyacinth had put in a racial complaint against me?"*) We find that she did say the latter but not the former.
121. Although it is denied, we find that after Mrs Uwimana's grievance to Mr Muir of 17 May 2021, he discussed the same with Mrs Park, who then told Mrs Williams about it. That is consistent with Mrs Williams saying later that she was bored with Mrs Uwimana's complaints. Miss Fenna was in the office when Mrs Park told Mrs Williams about the 17 May Grievance over the telephone. Mrs Williams told Miss Fenna saying that, *"Do you know that fucking Hyacinth has put in a racial complaint against me?"* and commenting that Mrs Uwimana was a racist and, *"hates white people"*. Although it is alleged that she also said she would, *"make the stupid black bitch pay for it"* we find that last remark was not made as there is no evidence to that effect in Miss Fenna's Witness statement. In response, Miss Fenna raised concerns about the lack of confidentiality with regard to Mrs Uwimana's grievance.
122. On 19 May 2021, Mrs Uwimana made a complaint verbally to Ms Catherine Crook of Human Resources about the way that she was being treated. This is confirmed in the email of 19 May referred to above which reads:-

"Resident 'TS' had made a sexualised gesture with his hands which Michael reported to Gavin.

I was informed that Gavin stated that the hand gesture meant no harm and the this is what comrades did in the Army. Hyacinth stated that Gavin had informed her that 'TS' apologised, however no apology was given by

'TS'. I was informed that the only concern was that 'TS' would lose his probation.

Hyacinth stated that comments had been made regarding her ability to read by residents and residents not wanting to speak with her, asking for Carol, Sandra or Michael only.

Hyacinth stated that Michael had requested that she complains to Head Office".

Ms Crook asks Mrs Park to investigate these matters.

123. On 20 May 2021, a Service User said to Mrs Uwimana that Mrs Williams had told him that she, (Mrs Uwimana) had put in a complaint about Mrs Williams. Mrs Williams says that on that occasion, Mrs Uwimana told her that a Service User had said that she was leaving because Mrs Williams was a racist. What is clear is that Mrs Uwimana raised concerns that their issues were being discussed with Service Users. She was concerned about the lack of confidentiality. This is an alleged protected act.

124. Mrs Williams rang the Service User concerned. She spoke to him on loud speaker. After that conversation, we find that Mrs Williams did say to Mrs Uwimana that she was, *"fucking paranoid"*. She admitted telling her that she was paranoid but we find that her denial that she swore in that way was not credible. We also find that she said that she was bored of Mrs Uwimana's accusations. Mrs Uwimana also alleges Mrs Williams told her to, *"fuck off and go back to where she came from"*. Miss Fenna's quotation of the words used are slightly different, *"You put in a complaint against me. You are a fucking bitch. You are no fucking use to anyone. You sort of people think you are better than us. All you do is call us whities!"* Words were used that upset Mrs Uwimana as corroborated by her resignation letter of 16 June 2021,

"Thirdly, you remember what happened on 20 May at 13h52"? That event still playing in my mind, I try to forget but I can't. I don't wish what happened to me to happen even to my worst enemy. I can't sleep, I can't even concentrate due to too much stress and anxiety."

125. Mr Kingsbury says he does not recall the words used at all. Everybody agrees that he left the room when the exchange became heated. It is also alleged that Mrs Williams said, after Mr Kingsbury had left the room,

"Say something, you fucking bitch. Oh, Michael is not here so you've got nothing to say?"

126. Our finding is that cross words were spoken including Mrs Williams telling Mrs Uwimana that she was *"fucking paranoid"* and that she was bored of her accusations but in respect of the foul and racist language used, we find that the claimants are embellishing, exaggerating and those extreme words were not used.

127. We find Mr Kingsbury's claim to not recall the conversation at all, not credible. Mrs Williams says he was there. Both Claimants are clear that he was there. We accept that Mr Kingsbury did leave the office to take a call from a Service User. He heard the shouting and he returned to the room after the call and did nothing about the shouting.
128. The Claimants say that on returning to the room, Mr Kingsbury joked about the incident. There is no detail provided by Mrs Uwimana in terms of what he is supposed to have said. Miss Fenna does not mention his returning to the room. We find he did not joke about the incident, as alleged.
129. Miss Fenna did tell Mrs Williams to calm down and Mrs Williams did respond by telling her to "fuck off". Mrs Williams did not throw the telephone at Miss Fenna, we note Miss Fenna's evidence changed from telephone to pager. We accepted Mrs Williams evidence that she had put the telephone down hard and it had bounced out of the cradle. This was a case of exaggeration on the part of Miss Fenna.
130. That evening at 18:30, Mrs Williams emailed Mrs Park saying that she and Mrs Uwimana had words that day regarding her accusations of racism. She wrote,
- "I feel as if I have been stabbed in the back and have tried to be professional but feel Hyacinth has some sort of agenda?????" The clients do not want to be supported by her, not because of her colour but her attitude towards them. She has recently informed me she is taking Bedford Council to court for racism in the workplace and I personally feel that she is trying to do the same here. She has told Michael she enjoys working here but she told me the other day she is always moaning to her family about the job and they said to leave..."*
131. A meeting was held on 21 May 2021 attended by Mrs Park, (who took the Minutes), somebody called Ronnie Neill, (Health and Safety Manager), Mrs Uwimana, Miss Fenna, Mrs Williams and Mr Kingsbury. Mrs Williams and Miss Fenna were asked to leave the room whilst Mrs Park discussed with Mrs Uwimana her complaint about 'TS'. Minutes record Mrs Uwimana describing 'TS' making a circle with his finger and thumb and tapping it on his leg, (that is in accordance with the so called squaddie's game). Very different from the description Mrs Uwimana wrote in her written complaint quoted above. The minutes are, we find, inaccurate.
132. The minutes are in our view unreliable, but they purport to record Mrs Uwimana complaining about residents making jokes about her hair, that she is always on a break and that she does not do anything. Mr Kingsbury urged her to report such incidents. Mrs Park said that education is the key to moving forward and that Mrs Uwimana must report derogatory comments so that offensive behaviour can be eradicated.

133. Mrs Williams and Miss Fenna rejoined the meeting. Mrs Uwimana is recorded as saying that she was sick and tired of unfunny jokes from residents and questioned why the target was the only black person. She is recorded as stating that a previous staff member had left because a resident had said that she looked like the 'Nutty Professor' and referred to her as 'King Kong', (we have already expressed our doubts about the accuracy of these minutes). Mrs Park is reported as saying that if the incident had been reported it would have been dealt with. Mrs Uwimana is recorded as referring to the two handymen and that only the black one was chased with a knife and the subject of complaints about his lack of skills. Mrs Uwimana is recorded as saying that she felt that white people do not see racism as it does not happen to them, Mrs Park stating that Equality and Diversity must be addressed at Residents Meetings.
134. Mrs Uwimana complains that she was subjected to this meeting after Mrs Williams had complained about her, as opposed to her grievances about racism. We find that the meeting was called because of Mrs Uwimana's complaint of 17 May regarding 'TS', Mrs Uwimana's complaint to Ms Crook on 19 May, because of the argument between the protagonists on 20 May and Mrs Williams' email that evening. The first part of the meeting was with Mrs Uwimana alone discussing her concerns, in particular with regard to 'TS'.
135. It is alleged that Mrs Park said with regard to 'TS' that he acted as he did because he fancied her. We accept her evidence that she did not use those words, she made reference to his childish playground behaviour.
136. The meeting on 21 May 2021 was not a disciplinary meeting. Mrs Uwimana agreed in cross examination that no complaint was raised against her during the meeting. Miss Fenna alleges that she did a protected act in the meeting on 21 May 2021 by:-
- 136.1. Saying that she had noticed racism in the workplace, we find that she did;
- 136.2. Alleging that she had been told by Miss Levy she had experienced racism in the workplace. We find that she did not do so, there is no evidence that Miss Levy and Miss Fenna had a conversation, not in either of their witness statements nor in cross examination; and
- 136.3. Claiming that Mr Kingsbury and the Respondent generally, had not been supportive of staff who were victims of racism or staff who spoke out against racism. The minutes do not record Miss Fenna as saying anything, but for reasons that we have explained, we regard the minutes as unreliable. Mrs Williams and Mrs Park deny that Miss Fenna raised these points. Miss Fenna does not say anything about this expressly in her witness statement on the point, nor does Miss Uwimana report the

allegation in her witness statement. We find that Miss Fenna did not raise a concern of lack of support from Mr Kingsbury or the Respondent generally.

137. Mrs Uwimana alleges that during the meeting on 21 May, she was met with visibly negative and intimidating body language and that her grievances were ignored by Mrs Park and “Ronnie”, (a reference to the Health and Safety Manager, Ronnie Neill). The minutes record the first half hour of the meeting spent discussing with Mrs Uwimana her grievances and complaints. The allegation appears in the Particulars of Claim at paragraphs 23 and 24, this is not expanded on at all in Mrs Uwimana’s witness statement. There is no evidence about any particular body language or facial expression by anybody and the matters she raised appear to have been discussed. We acknowledge that for reasons we have already explained, there are question marks with regard to the accuracy of the minutes, but there is no written corroboration of matters Mrs Uwimana raised or wished to raise that not having been discussed or that she had been prevented from raising. The key point is that Mrs Uwimana says that she raised the fact that staff were racist and that is not recorded here. She says that she told those present about the ‘Nutty Professor’ and ‘King Kong’ comments by Mrs Williams. Miss Fenna backs that up in paragraph 23 of her Particulars of Claim, but not in her witness statement. In cross examination, Miss Fenna said she did not recall at all references to ‘King Kong’ by Mrs Williams being raised. She candidly acknowledged in cross examination her memory was not reliable. We note that in her resignation letter, Mrs Uwimana did not say that she had raised the issue of staff discrimination in the 21 May meeting. Our finding is that she did not raise specific allegations against staff of racism at the 21 May meeting. The issue with ‘TS’ was discussed, as were jokes about her hair. We find that her grievances were not ignored.
138. Miss Fenna alleges that subsequent to the 21 May meeting, she was subjected to derogatory and sarcastic comments by Mrs Williams, who said to people they should be careful what they said to Miss Fenna because she was, “*Hyacinth’s best friend*” and she made comments like, “*Your best friend is not working today?*”. There is no evidence about these matters and we find that Mrs Williams did not make those alleged comments, or throw paperwork at Miss Fenna, or speak to her in a condescending way.
139. Mrs Uwimana says that she had been told by several Service Users that they had been told she had been sacked for being a racist. We note that Mrs Uwimana specifically complains in her resignation letter, (page 269),

“... on Monday 7th I came to work as usual in morning around 9.30am, ‘JM’ (Client) was surprised to see me because I supposed to be sacked; I asked him why then he said that he was told by his house mate ‘PR’ that Miss Fenna was sacked because she was selling drugs and me, I was sacked because I had been racist”.

140. That corroborates Mrs Uwimana's allegation. Mrs Uwimana makes reference to this at paragraph 29 of her witness statement. We find that Mrs Uwimana was told by a Service User (not several) that he had been told that she had been, "*sacked for being a racist*".
141. On 3 June 2021, there was an incident between Service User 'TS' and Miss Fenna which involved the Service User spraying her with some form of cleaning fluid whilst, "*messing around*" and Miss Fenna reacting by slapping him on the back. She describes it as a playful slap and complains that Mrs Williams subsequently encouraged 'TS' to put in a complaint for assault. We were provided with the photograph of a red mark on somebody's back, consistent with a very hard slap. It has not been suggested to us that this photograph was false, inaccurate or misleading in any way. The slap would have had to have been very hard indeed to have created the mark. Mrs Williams acknowledges that she spoke to 'TS' and told him about the complaints procedure.
142. It is alleged that on 5 June 2021, Service Users informed Mrs Williams that Miss Fenna had handed out to residents what were referred to as, "*hash cakes*", in other words cakes containing cannabis.
143. Miss Fenna was subsequently suspended, the Letter of Suspension is at page 259. It merely refers to an allegation of gross misconduct.
144. By letter dated 9 June 2021, Miss Fenna was invited to an investigatory meeting. The alleged misconduct was described as, "*alleged physical assault of a resident...*". There is no mention of hash cakes.
145. The Investigatory Meeting took place on 11 June 2021. The minutes are at page 264, the transcript from Miss Fenna's recording begins at page 325. As previously explained, there are material differences:
 - 145.1. From the transcript it is clear that the allegation of supplying hash cakes is made to Miss Fenna for the first time in the meeting and she is caught by surprise. That is not apparent from the minutes.
 - 145.2. The transcript records that Miss Fenna not only alleges that Mrs Park and Mrs Williams are friends, but also that she has been told by Mrs Williams that Mrs Park rings her up and tells her everything. That is not recorded in the minutes, which simply note that the objection is that they are friends. Ms Crook, (chairing the meeting) just says they should put that to one side.
 - 145.3. The minutes suggest that Miss Fenna had said she would not supply hash cakes because hash costs money and she would not do it for free. The transcript reveals Miss Fenna making no such remark.

- 145.4. The Minutes suggest Miss Fenna had admitted saying to 'TS', "go make a fucking complaint then", the transcript does not reveal Miss Fenna making any such admission.
- 145.5. We find in the transcript, (not in the minutes) corroboration of Miss Fenna's allegation that Mrs Williams was making remarks along the lines that she is Mrs Uwimana's best friend and that you have got to be careful what you say.
- 145.6. The minutes do not record Miss Fenna's comment, "to do with the cakes, I don't believe in drugs" and "I have nothing to do with drugs". She also encouraged the Respondent to go to the Police, which is not recorded in the minutes.
146. Miss Fenna resigned her employment on 11 June 2021, her resignation is at page 266, she wrote:
- "As I feel whatever the decision becomes of the investigation, that it will be unbearable to work there. As I have seen with my own eyes how the staff are treated by certain other members of staff and clients."*
147. On 15 June 2021, Mrs Williams made a change to some entries in the rent books for some clients made by Mrs Uwimana. We accept Mrs Williams evidence that this was a routine correction of mistakes that colleagues would do for each other.
148. Mrs Uwimana resigned her employment on 16 June 2021, page 269. We have already quoted her reference to a Service User suggesting he had been told that she had been sacked for being racist. She also complained that she had noticed that her records had been changed, which she implies was done to set her up so that it looked as if she had been stealing money. She referred to the events on 20 May 2021, which she said were still playing on her mind. She described that as the main reason for her resignation and she does not feel that she can give a month's notice. She concludes,

"But tell your staff to stop bullying and harassment and that the behaviour that makes someone feel intimidated or offended. Harassment is unlawful under the Equality Act 2010 and can be punished by the Law."

Conclusions

Mrs Uwimana

Harassment Related to Race – Mrs Uwimana

149. It is always important to consider harassment allegations before direct discrimination allegations, because a finding of harassment on a particular

allegation precludes that allegation from being found to be direct discrimination.

150. We summarise our findings in relation to the allegation of racial harassment, as set out in our Findings of Fact, as follows:
- 150.1. On 17 December 2020, Mr Kingsbury and a Service User made comments to Mrs Uwimana about her hair, comparing her hair to a bush, a forest and a bird's nest. Mr Kingsbury did not touch her hair as alleged.
 - 150.2. On 18 December 2020, a Service User 'KM', (and not Mrs Williams) said to Mrs Uwimana that he like her hair, asked her if she had a new wig and reached out to touch it. She became cross with him, but she was not accused of being loud and aggressive.
 - 150.3. On 8 February 2021, Miss Levy told Mrs Uwimana that she had heard Mrs Williams refer to her, Miss Levy, as 'King Kong' and the 'Nutty Professor'. Mrs Uwimana did not raise this with Mr Kingsbury and he did not shrug off her complaints.
 - 150.4. In early March 2021, Service Users told Mrs Uwimana that they did not trust her, asked her if she had been to school, whether she could read and whether there were schools in Africa. Mr Kingsbury intervened and assisted the Service Users in completing a Housing Application Form. Mr Kingsbury spoke to the Service Users about their raised voices, but not about the comments that they had made. The Service Users did read aloud to Mrs Uwimana in a condescending manner.
 - 150.5. In mid-March 2021, Mrs Williams did describe a black maintenance worker in words along the lines of describing him as useless, saying that he could not speak English, that she did not know why the Respondents employed him and that his being chased by a Service User with a knife was his own fault because he could not speak English. This did not involve Mrs Uwimana.
 - 150.6. On around week commencing 22 March 2021, Mrs Williams did describe a particular Service User as a, "*fucking bitch*" and as a, "*stupid bitch*" but she did not use the word, "*black*".
 - 150.7. Mrs Uwimana has never been called by the 'N' word. She was told that she cannot be seen at night, or words to that effect.
 - 150.8. In the days following 10 April 2021, Mrs Williams did warn a Service User to take care as their comments may be regarded as racist, this was in the context of 'KM' asking Mrs Uwimana

what she was eating, her replying that it was meat from her country and his response that it was probably giraffe. The warning from Mrs Williams was a serious warning and appropriate. She did not say, *“these people just come to our country; we give them jobs, and then they just complain and call us racist”*.

- 150.9. On 20 May 2021, in an altercation with Mrs Uwimana, Mrs Williams did say that she was *“fucking paranoid”* and that she was bored of her accusations. She did not call her a bitch, did not tell her to, *“fuck off and go back where she came from”* and she did not say, *“Say something, you fucking bitch. Oh, Michael’s not here so you’ve got nothing to say?”*.
 - 150.10. Mr Kingsbury did leave the office on 20 May during the altercation between Mrs Williams and Mrs Uwimana, he did so to take an urgent phone call.
 - 150.11. When Mr Kingsbury returned to the office on 20 May, he did not joke about the incident.
 - 150.12. The meeting on 21 May was to discuss the concerns raised by Mrs Uwimana in her grievance, as well as the altercation that had taken place between them the previous day. The meeting of 21 May did not amount to Mrs Uwimana being, *“subjected to”* a meeting raised because of Mrs Williams complaint and it did not amount to a disciplinary meeting.
 - 150.13. In or around May 2021, Mrs Williams did use words along the lines of that if Mr Kingsbury were to put two black women on the same shift together no residents would turn up. The context was a discussion about shifts and a concern that Mrs Uwimana had raised about suffering racism at the hands of Service Users.
151. Insofar as these allegations have been upheld, they amount to unwanted conduct.
 152. The allegations upheld above numbered 156.1, 156.4, (Mr Kingsbury’s failure to act) 156.7, (that she cannot be seen at night) and 156.9, (she was paranoid and Mrs Williams was bored of her accusations) had the effect, in the reasonable perception of Mrs Uwimana and the circumstances of the case, of creating the proscribed atmosphere and relate to race. To this extent, Mrs Uwimana’s complaint of race harassment succeeds.

Direct Race Discrimination – Mrs Uwimana

153. Insofar as the allegations of direct discrimination have been upheld, as set out above, they have already been found to amount to harassment and are not therefore instances of direct discrimination.

Harassment Related to Sex – Mrs Uwimana

154. We summarise our Findings of Fact in relation to the allegations of harassment related to sex:-

154.1. On 12 May 2021, in relation to Mrs Uwimana’s complaint about the gesture made toward her by ‘TS’, Mrs Williams said that he was, *“just being silly”* and that Mrs Uwimana should, *“brush it off”*.

154.2. On 14 May 2021, Mr Muir and Mrs Williams discouraged Mrs Uwimana from making a formal complaint about ‘TS’.

154.3. At a meeting on 21 May 2021, Mrs Uwimana was not told in relation to ‘TS’, *“he fancies you and that is why he did it”*. Mrs Park tried to explain his behaviour by reference to immature playground behaviour.

155. The conduct was unwanted. Being told that ‘TS’ was just being silly, that she should just brush it off and discouraging Mrs Uwimana from making a complaint, (not Mrs Park’s comment on 21 May) had the effect of violating Mrs Uwimana’s dignity, it was degrading, humiliating and offensive and created such an environment for her, to suggest that she should put up with such a crude gesture. This conduct reasonably in the perception of Mrs Uwimana, having regard to the circumstances of the case, created the proscribed atmosphere in that respect and was clearly related to sex. Her complaint of harassment related to sex succeeds.

Direct Sex Discrimination – Mrs Uwimana

156. The allegations in relation to comments on 12 May and discouraging Mrs Uwimana from making a complaint on 14 May have been upheld and have been found to amount to harassment and they are not therefore direct discrimination.

157. The words of Mrs Park during the meeting on 21 May explaining the immature behaviour of ‘TS’ are not a detriment and were intended to help. They do not amount to direct discrimination.

Victimisation – Mrs Uwimana

158. With regard to the alleged protected acts:-

- 158.1. We found that Mrs Uwimana did not complain to Mr Kingsbury on 8 February 2021 about the racist comments made to Miss Levy.
- 158.2. We found that Mrs Uwimana did not between 4 April and 10 April tell Mr Kingsbury that her recent hospital admission had been triggered by her experiences whilst working for the Respondent.
- 158.3. On 10 April 2021, Mrs Uwimana did write an email to Mr Kingsbury and Mrs Williams in which she made complaints, including about members of her team commenting on her hair and not being able to see her because it is night. That amounts to doing something in connection with the Equality Act 2010, she was raising matters of race discrimination and she was making allegations that there had been a contravention of the Equality Act 2010 by discrimination. The email therefore amounted to a protected act.
- 158.4. On 12 May 2021, Mrs Uwimana did raise a grievance with regard to the gesture made toward her by 'TS'. Her complaint was about the actions of a Service User, not an employee or agent of the Respondent, not aided or abetted by the Respondent, it is not therefore an allegation capable of being a contravention of the Equality Act 2010, or of having the purpose of or in connection with that Act and is not therefore a protected act.
- 158.5. Mrs Uwimana did on 17 May 2021 raise a grievance with Mr Muir about the actions of 'TS'. That alone would not be sufficient to render this email a protected act, (see above) but she also made reference to a work colleague being called 'King Kong' and the 'Nutty Professor', to Mrs Williams making a remark about two black women being placed on the same shift and to hearing complaints about the black handyman's abilities. These are allegations of racism contrary to the Equality Act 2010. The grievance is for the purpose of or in connection with the Act and contains allegations of contravention of the Act and is therefore a protected act.
- 158.6. Mrs Uwimana did raise complaints with Ms Crook. This was with regard to the gesture of 'TS' and comments that had been made to her by Service Users. It was confirmed by the contemporaneous email from Ms Crook to Mrs Park of 19 May 2021. For the same reasoning as above though, these are complaints about Service Users and therefore do not amount to a protected act.

- 158.7. On 20 May 2021, Mrs Uwimana did raise with Mrs Williams concerns about confidentiality in the way that her complaint was being handled. In particular, Service Users were being told that she was making complaints about their racism. That is a complaint about Mrs Williams' actions. The disclosures to Service Users by Mrs Williams could amount to direct race discrimination or harassment and raising this point with Mrs Williams was therefore doing something in connection with the Equality Act 2010 and does therefore amount to a protected act.
159. We make the following findings in relation to the alleged detriments said to have been inflicted because of the protected acts:-
- 159.1. The warning to the Service User about being branded racist was not a detriment, it was a serious warning in the context of the comment about giraffe meat.
- 159.2. On 20 May 2021, we found as noted above, that Mrs Williams did tell Mrs Uwimana that she was "*fucking paranoid*" and that she was bored of her accusations, (but not that she made the other alleged remarks). Those two comments were a detriment; they are not nice things to have been said to her and would make her feel at a disadvantage going forward, that Mrs Williams had such a low view of her concerns. Those remarks were made precisely because of the protected act.
- 159.3. We found that Mr Kingsbury did not joke about the incident on 20 May, the meeting on 21 May was not disciplinary, Mrs Uwimana was not met with negative and intimidating body language, nor were her grievances ignored on 21 May.
- 159.4. The list of issues refers to Mrs Uwimana being subjected to a hostile working environment in the days following 21 May 2021. That allegation lacks the required specificity. What Service Users were told is covered by the next allegation. Other aspects of the hostile environment are covered by the harassment findings above and in fact, pre-date 21 May.
- 159.5. Mrs Uwimana was told by one Service User that he had been told that she had left the Respondent's employment, having been sacked for being a racist. That is a detriment; the people that she was meant to work were told that she had been dismissed because she was a racist and that rumour was spread by Mrs Williams because of the protected acts.
- 159.6. The Money Records for Mrs Uwimana's Service Users were changed by Mrs Williams on or about 15 June 2021, but as we found, in appropriate circumstances and that did not therefore amount to a detriment.

160. In relation to the allegations at paragraphs 165.2 and 165.5, the complaint of victimisation succeeds.

Failure to Make Reasonable Adjustments – Mrs Uwimana

161. It is accepted that Mrs Uwimana was at all material times a disabled person by reason of Post Traumatic Stress Disorder.
162. The Respondent denies that it knew or could reasonably have been expected to know that she was disabled. In the Tribunal’s judgement, any self-respecting HR practitioner seeing on a pre-employment questionnaire the reference to PTSD and the words, “*past ten years ago*” would have made further enquiry. That further enquiry would have revealed, in line with what is stated in the Discharge Form on 22 July 2021, (after Mrs Uwimana’s employment) that she has a history of PTSD which has been stable for the last nine to ten years without medication and that, (in accordance with the letter of 2 July 2021), she had been managing, “*quite well*”, which is not the same as the Respondent’s apparent position that the PTSD was in the past and no longer an issue, (a fundamental misunderstanding of the nature of PTSD).
163. The very fact that the Respondent has on legal advice accepted that Mrs Uwimana was disabled at the material time because of PTSD is acknowledgement, as is well known, that PTSD is a mental impairment that is likely to recur and in this case, has lasted for very many years and that is why it meets the definition of disability. The most cursory of further enquiries from the Respondent would have revealed to it that Mrs Uwimana meets the definition of a disabled person for the purposes of the Equality Act 2010 by reason of PTSD and we therefore find that it could reasonably have been expected to know as such and therefore has had constructive knowledge.
164. However, Mrs Uwimana’s disability discrimination claim runs into difficulties as we come to the next paragraph in the List of Issues. Her claim is founded solely on a failure to make reasonable adjustments and the PCP relied upon is the allegation that her grievances regarding racism or sexism were not investigated properly or at all. The difficulty with this is that it is an allegation of a one off instance relating to Mrs Uwimana alone. Evidence has not been advanced suggesting that there was a history, (a practice) of not properly investigating grievances generally, nor that future such grievances either by Mrs Uwimana or others, would not be, “properly” investigated. For this reason the complaint of disability discrimination must fail.

Miss Fenna

Harassment Related to Race - Miss Fenna

165. We have made the following findings in relation to the allegations of unwanted conduct on Miss Fenna's case:-
- 165.1. Mrs Williams did use words describing the black maintenance man along the lines of being useless, not being able to speak English, not knowing why the Respondents employed him and that of him being chased down the street by somebody holding a knife, it was his own fault because he could not speak English.
- 165.2. In the week commencing 22 March 2021, Mrs Williams did make reference to a female Service User asking why the *"stupid bitch hadn't been evicted yet"* and describing her as *"a fucking bitch"* and a *"stupid bitch"* but we found that in each instance, she did not use the word black.
- 165.3. We found that Mrs Williams did make derogatory comments to Miss Fenna about Mrs Uwimana and Ms Nyarko; she hated the way they dressed, did not like their hair and that they think that they are special.
- 165.4. In early April 2021, Mrs Williams did describe Mrs Uwimana and Ms Nyarko as incompetent, but Mr Kingsbury was not present.
- 165.5. On 10 April 2021, Mrs Williams did say of Mrs Uwimana that she was, *"complaining about the white people"*.
- 165.6. On or around the week commencing 12 April 2021, Mrs Williams did say to Miss Fenna, *"it was the boys who called Jaydine King Kong. I just laughed and said she looks more like the Nutty Professor"*.
- 165.7. On 12 May 2021, Mrs Williams did say to Miss Fenna that Mrs Uwimana should leave her job and said words to the effect, *"These foreigners think they're something special. Even Juliana – no one likes her or goes to her. She was just lazy sitting on her fucking big ass on the computer. At least she knows how to do that."*
- 165.8. During the week commencing 17 May, Mrs Williams did not say to Miss Fenna with regard to Mrs Uwimana, that she would, *"make the stupid bitch pay for it"*. She did suggest Mrs Uwimana was a racist and hates white people, she did say, *"Do you know that fucking Hyacinth had put in a racial complaint against me?"*
- 165.9. In the days following 17 May 2021, Miss Fenna heard Mrs Williams making comments to others that they should be careful what they said to Miss Fenna, that she was Mrs Uwimana's best

friend and to her when Mrs Uwimana was not at work, “*Your best friend not working today?*”

- 165.10. As already noted, on 20 May 2021, Mrs Williams did say to Mrs Uwimana in the hearing of Miss Fenna that she was, “*fucking paranoid*” and that she was bored of her accusations. She did not use the words precisely as alleged by Miss Fenna at allegation C 1 j).
- 165.11. On 20 May 2021, Mrs Williams did tell Miss Fenna to, “*fuck off*” but did not throw a phone at her, she slammed the phone down firmly onto its cradle so that it bounced off.
- 165.12. In the days following 21 May 2021, Mrs Williams did not throw paperwork at Miss Fenna, nor speak to her in a condescending manner or give her unfriendly glances.
166. Insofar as these allegations have been upheld, allegations 171.1 and 171.3 to 171.11 amount to unwanted conduct related to race; Miss Fenna did not want to hear these remarks, neither those directed at her personally nor those about her black colleague.
167. Whilst it may seem counter intuitive that a white person could suffer harassment related to race, it is possible. Miss Fenna was consistent in her evidence and we accept it, that she found this conduct offensive. She did not like it. She was encouraging Mrs Williams to calm down. She experienced what was to her a hostile and offensive environment and her perception of that was reasonable in the circumstances of the case. The conduct was related to race, the race of her black colleague, Mrs Uwimana. For these reasons, Miss Fenna’s complaint of harassment related to race, succeeds.

Direct Associative Race Discrimination – Miss Fenna

168. There are just the two allegations:-
- 168.1. We have found that on 20 May Mrs Williams did tell Miss Fenna to “*fuck off*” but we have found that to be an act of harassment and it is not therefore direct discrimination.
- 168.2. We found that Mr Kingsbury did not make jokes following the altercation on 20 May 2021.
169. The complaint of direct associative race discrimination therefore, does not succeed.

Harassment Related to Sex – Miss Fenna

170. In relation to the allegations, of which there are just two, we found:-

- 170.1. Mrs Williams did say to Mrs Uwimana, (not Miss Fenna) that with regard to the 'TS' gesture, he was just being silly and she should brush it off.
- 170.2. On 14 May 2021, Mrs Williams and Mr Muir did encourage Mrs Uwimana not to make a formal complaint about 'TS'. That was to Mrs Uwimana, not Miss Fenna.
171. Miss Fenna does not recite in her evidence that these things were said to her or in front of her. It was not unwanted conduct toward Miss Fenna and it did not create the proscribed atmosphere for her. For these reasons the complaint of harassment related to sex fails.

Direct Discrimination Related to Sex – Miss Fenna

172. Just the one allegation is relied upon, that of Mrs Williams telling Mrs Uwimana that 'TS' was being silly and she should brush it off. That is treatment of Mrs Uwimana, not treatment of Miss Fenna. For this reason, the allegation of direct discrimination fails.

Victimisation – Miss Fenna

173. We have made the following findings in relation to the alleged protected acts, on Miss Fenna's case:-
- 173.1. On 17 May 2021, Miss Fenna did share with Mrs Williams her concerns about lack of confidentiality in the handling of Mrs Uwimana's complaint. However, for the reasons explained above, this related to the actions of a Service User and is not connected to the Equality Act 2010 and therefore not a protected act.
- 173.2. On 20 May 2021, Miss Fenna did tell Mrs Williams to calm down but that was not in connection with the Equality Act 2010 and therefore not a protected act.
- 173.3. On 21 May 2021, Miss Fenna did during that meeting tell those present that she had noticed racism in the workplace. That was a protected act, she was not just referring to Service Users.
- 173.4. We found that Miss Fenna did not during the 21 May meeting say that she had been told by Miss Levy that she had experienced racism in the workplace, did not say that she felt Mr Kingsbury had not been supportive, nor that there was a general lack of support for staff who are victims of racism or who spoke out against racism.

174. The one protected act is therefore a reference to racism in the workplace during the meeting of 21 May 2021. Our findings in relation to the detriments said to have been inflicted upon Miss Fenna because of that protected act are as follows:-
- 174.1. We found that Miss Fenna was not subjected to derogatory and sarcastic comments from Mrs Williams thereafter.
 - 174.2. What occurred on 20 May pre-dates the one protected disclosure on 21 May.
 - 174.3. Miss Fenna was subjected to unfriendly glances and looks from Mrs Park and Mrs Williams.
 - 174.4. Mrs Williams did not throw paperwork at Miss Fenna, nor speak to her in a condescending manner.
 - 174.5. Mrs Williams did tell a Service User, 'TS' to make an official complaint about Miss Fenna. She had good reason for doing so, the red mark reveals that Miss Fenna hit 'TS' very hard, Mrs Williams therefore had good reason to encourage 'TS' to make a complaint and that was her motive, not the protected act.
 - 174.6. Miss Fenna was suspended on 5 June, that was not the doing of Mrs Williams and was not an act of victimisation.
 - 174.7. Miss Fenna was invited to an Investigation Meeting on 11 June, that was not because of the protected act but because of the assault on 'TS'.
 - 174.8. As revealed by the transcript, in more detail than is shown in the minutes, Miss Fenna did raise during the Investigatory Meeting on 11 June her objections to Mrs Park being involved in the Investigation because of her perceived friendship with Mrs Williams. Her objection was overruled.
 - 174.9. The final alleged detriment relied upon is that it was alleged during the Investigation Meeting that Miss Fenna had given, or sold, hash cakes to clients. It is said that was an act of victimisation, because it was a false allegation based on false evidence. We considered the following
 - 174.9.1. It is odd that the allegation about selling hash cakes was introduced during the Investigatory Meeting, whereas Mrs Williams' evidence was that she knew about the allegation from the Service Users on 5 June 2021.

- 174.9.2. We know that the official minutes of the investigatory meeting are inaccurate and biased for reasons previously discussed. Why was that so? Was it because the Respondent was determined to get rid of Miss Fenna, (or Mrs Williams was determined to make sure she was got rid of) or was it that because of Miss Fenna's resignation, Ms Crook, (who wrote the minutes) wanted to stitch things up in case there was a claim?
- 174.9.3. Miss Fenna was adamant in her witness statement and in her oral evidence, that she was totally against drugs.
- 174.9.4. Mrs Williams' diary entries about when she learned of the hash cakes business are inconsistent, in that she has written on 2 June 2021, "*Sandra slapped 'TS' on back + gave Callum + Adam hash cakes*". Her evidence is that she was told on 5 June. There is no entry for 5 June. We note Mrs Williams appears to have been working on 5 June, 11-7.
- 174.9.5. The Respondent did not report the incident to the Police; one would have thought it would have done. Miss Fenna reported it herself. That was a bold step unless she was confident she did not do that of which she was accused.
- 174.9.6. Mrs Williams' account is corroborated by handwritten statements from two Service Users claiming they had been given hash cakes by Miss Fenna. One is undated, but says the incident took place on 2 June. The second is dated 5 June and says the incident took place on 2 June. Mrs Williams wrote an email on 5 June 2021 to Mrs Park and Ms Crook, but not to Mr Kingsbury, timed at 12:41 (page 261), saying that day when she started her shift, she was given this information by the two clients that Miss Fenna had given them the hash cakes the previous Wednesday, which would be 2 June.
- 174.9.7. The letter of suspension makes no reference to this, it is dated 5 June, but we do not know if it was written before or after the email.
- 174.9.8. More surprisingly, the invitation to attend the Investigatory Meeting on 9 June makes no reference to this allegation.

- 174.9.9. Mrs Williams' evidence is that she is adamant that she was given this information by Service Users.
- 174.9.10. Mrs Park's evidence (paragraph 26) is that she was given information about the hash cakes on 5 June, followed up afterwards with the two written statements. She says the suspension was for the slap. She does not explain why the hash cakes were not mentioned in the invitation, which she says she wrote, (paragraph 28).
- 174.9.11. Mrs Williams was close to her Service Users.
- 174.9.12. Mrs Williams was the sort of person who would make the sort of remarks we have found were made as noted above.
- 174.9.13. Miss Fenna was credibly adamant in her witness statement and in her evidence that she is totally against drugs.
- 174.9.14. The Respondent has not called Ms Crook to explain the significant discrepancy between the transcript and the minutes produced.
- 174.9.15. Neither Mrs Williams nor Mrs Park attempt to explain in their evidence why they bounced the hash cakes allegation on Miss Fenna in the hearing, when they knew it was an issue in this case.
- 174.10. Having regard to all of the above we find on the balance of probabilities that the hash cake allegation was a false allegation.
175. We have upheld the alleged detriments that Miss Fenna was subject to unfriendly glances, that she raised her concerns about Mrs Park being involved in the disciplinary process but the decision was taken to proceed anyway and that a false allegation was made against her. We could conclude, absent explanation, that these were because of the protected act because of:
- 175.1. The timing of these events, so shortly after the meeting on 21 May;
- 175.2. The willingness to produce of false minutes;
- 175.3. Mrs Williams nature, as revealed by our findings as to what she has said and done, as set out above, and

- 175.4. The fact that the hash cakes allegation was false.
176. The burden of proof therefore shifts to the Respondent to satisfy us that the protected act played no part in those detriments. Has the Respondent done so? Neither Mrs Williams nor Mrs Park attempted to explain in their evidence why they bounced Miss Fenna with the hash cakes allegation. No one attempted to explain the false minutes. The Respondent did not call Ms Crook. The Respondent has not discharged the burden of proof and we find that the reason for these three detriments was because Miss Fenna had said on 21 May that she had seen racism in the workplace. Miss Fenna's complaint of victimisation therefore succeeds.

Remedy

177. The remedy to which the claimants are entitled will be determined at a Remedy Hearing, notice of which will follow in due course together with case management directions.

Employment Judge M Warren

Date: 23 November 2023

Sent to the parties on: 4 December 2023

For the Tribunal Office.