EMPLOYMENT TRIBUNALS

Claimant: Mrs R Ayub

Respondent: North Warwickshire Borough Council

Heard at: Midlands West

On: 4, 5, 6 (in person), 7 (by CVP) December 2023

Before: Employment Judge C Knowles
Dr G Hammersley
Mr N Forward

Representation
Claimant: Litigant in person
Respondent: Mr M Shepard, Counsel

JUDGMENT having been sent to the parties on **8 December 2023** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. The Claimant brought claims of harassment related to race and direct race discrimination arising out of her work for the Respondent as an agency worker between 14 June 2022 and 8 July 2022, and the termination of her assignment by the Respondent on 8 July 2022.

Issues

2. The issues in the case were discussed and agreed at a preliminary hearing for the purposes of case management before Employment Judge Knowles on 15 March 2023, and recorded in a case management order (p34 to p43 of the hearing bundle).

3. We addressed liability first, and so the issues that we had to decide were (p40-42):

1. *Time Limits*

    1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 6 July 2022 may not have been brought in time.

    1.2 Were the complaints of harassment and discrimination made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

    1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

    1.2.2 If not, was there conduct extending over a period?

    1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

    1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

    1.2.4.1 Why were the complaints not made to the Tribunal in time?

    1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. *Harassment related to race (Equality Act 2010 section 26)*

    2.1 Did the respondent do the following things:

    2.1.1 From the first week of her assignment, did Deborah Suffolk micro-manage the claimant when she was carrying out the simple task of calling a customer, and not let her call a customer without listening and watching her throughout a call and advising her how to phrase questions?

    2.1.2 Towards the end of the first week of the assignment, did Sandra Steikunas tell the claimant how to address a standard letter to a customer (requesting proof), and say that the way that the claimant was addressing a letter using an initial was not polite and not allow the claimant to explain why she was doing this?

    2.1.3 Throughout the claimant's assignment, did Sandra Steikunas check all the claimant's work?

    2.1.4 In the second week of her assignment, did Deborah Suffolk tell the claimant that she should not call anyone back unless Deborah Suffolk, Sandra or Rashpinder were in the office to listen to the calls and make sure that the claimant was asking the correct questions?

2.1.5 One afternoon in the third week of her assignment, did Rashpinder go into all of the claimant's work and email her asking her to correct it, when in fact there were no errors?

2.1.6 In the third week of her assignment, did Deborah Suffolk tell the claimant she had to work from the office so people could watch her when it had previously been agreed that the claimant could work from home?

2.1.7 On 8th July 2022, did the respondent terminate the claimant's assignment? (The respondent accepts that it did).

2.2 If so, was that unwanted conduct?

2.3 Did it relate to race?

2.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

2.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

3. *Direct race discrimination (Equality Act 2010 section 13)*

3.1 Did the respondent do the following things:

3.1.1 From the first week of her assignment, did Deborah Suffolk micro-manage the claimant when carrying out the simple task of calling a customer, and not let her call a customer without listening and watching her throughout a call and advising her how to phrase questions?

3.1.2 Towards the end of the first week of the assignment, did Sandra Steikunas tell the claimant how to address a standard letter to a customer (requesting proof), and say that the way that the claimant was addressing a letter using an initial was not polite and not allow the claimant to explain why she was doing this?

3.1.3 Throughout the claimant's assignment, did Sandra Steikunas check all the claimant's work?

3.1.4 In the second week of her assignment, did Deborah Suffolk tell the claimant that she should not call anyone back unless Deborah Suffolk, Sandra or Rashpinder were in the office to listen to the calls and make sure that the claimant was asking the correct questions?

3.1.5 One afternoon in the third week of her assignment, did Rashpinder go into all of the claimant's work and email her asking her to correct it, when in fact there were no errors?

3.1.6 In the third week of her assignment, did Deborah Suffolk tell the claimant she had to work from the office so people could

watch her when it had previously been agreed that the claimant could work from home?

3.1.7 On 8th July 2022, did the respondent terminate the claimant's assignment? (The respondent accepts that it did).

3.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than Lanah Foley, and she will rely on a hypothetical comparator in the alternative.

3.3 If so, was it because of race?

<u>Documents, Evidence and Procedure</u>

4. In order to decide the issues, we were provided with an agreed hearing bundle. This had originally been 410 pages long, but on the Friday before the hearing was due to start, the Respondent provided further documents to the Claimant. The Claimant told us on the first morning of the hearing that she had not yet had chance to read those documents. We therefore gave her time to read them before we looked at them. After the break, the Claimant confirmed that she had read the documents and that she was happy for them to be added to the bundle. The additional documents were therefore added by agreement between the parties, taking the bundle to 449 pages. Unless we say otherwise, page references in this judgment are to pages of the hearing bundle.

5. We had witness statements, and heard oral evidence, from the following witnesses:

<u>For the Claimant</u>

(a) Mrs R Ayub, the Claimant.

<u>For the Respondent</u>

(b) Ms Deborah Suffolk-Heath (**Ms Suffolk-Heath**), Housing Options Officer of the Respondent.

(c) Ms Sandra Steikunas (**Ms Steikunas**), Housing Options Officer of the Respondent.

(d) Mrs Rashpinder Josen (**Mrs Josen**), who at the relevant time was an agency worker carrying out the role of Housing Options Officer at the Respondent.

(e) Ms Angela Coates (**Ms Coates**), Director of Housing at the Respondent.

(f) Ms Mandy Rashid (**Ms Rashid**), Housing Options & Lettings Team Leader at the Respondent.

6. We discussed the likely timetable for the hearing with the parties, and explained when we would take scheduled breaks. We asked the parties whether any representative, party or witness required an adjustment to enable them to participate fairly in the hearing, and were told they did not. We explained to the parties that if anyone did require a break at any stage they should let the Tribunal know.

<u>Application to Amend</u>

7. On the morning of the 6 December, which was the third day of the hearing, we were provided with written submissions from each of the parties. Before calling the parties into the hearing, we took time to read those submissions. The Claimant's written submissions submitted that she had been discriminated against due to race and religion.

8. The claim form did not include any reference to the Claimant's religion, and the issues identified in the case management order (p40-43), and discussed at the start of the hearing before us were of race discrimination and harassment related to race only. The Employment Judge explained to the Claimant that the Tribunal could only hear the claims that had been brought in the claim form, unless there was a successful application to amend the claim.

9. The Claimant did then make an application to amend her claim to include two specific allegations:

(1) That on 1 July 2022, Mrs Josen had directly discriminated against the Claimant because of her religion (the Claimant is Muslim), alternatively had harassed the Claimant related to religion, by calling her a spoilsport for not ordering lunch with the team, when the Claimant had not ordered because she had Halal requirements.

(2) That on 8 July 2022, the Respondent had directly discriminated against the Claimant because of her religion by terminating her assignment on a day that she was on annual leave to celebrate Eid, alternatively that this was harassment related to religion.

10. At the preliminary hearing in March 2023, the Claimant had mentioned the allegation involving Mrs Josen. She had accepted that this allegation had not been in her claim form and had indicated that she wanted some time to decide whether to make an application for permission to amend her claim to include a claim about this incident (p37). Paragraph 7 of the case management order directed that any application to amend the claim to include that matter should be made by 5 April 2023 (p35).

11. In making her application to amend on 6 December, the Claimant submitted that she had misunderstood paragraph 7 of the March case management order. She also said that information and emails had come to light after the hearing in March. She said that whilst there had been a further preliminary hearing in November 2023 at which the issues had been confirmed as being those identified in March, that further preliminary hearing had been very short. The Claimant said that she had not been given any advice at the further preliminary hearing. She said she did not understand she could apply to amend her claim and thought she could only rely on these matters as background. The Claimant said she had been unwell from the end of March and that she had only had legal representation from a couple of months before the hearing in November and she had not had legal representation since that hearing.

12. The Respondent objected to the Claimant's application. The claim had been presented in 2022, and the last matter that was relied upon by the Claimant occurred on 8 July 2022. Nothing in the later disclosed emails was relevant to the application. The claims could have been made earlier, and had been known about at the preliminary hearing in March 2023. The case management order had been clear, and it also said (p35, paragraph 9) that if the issues were wrong or incomplete the parties must write to the tribunal. Whilst the Claimant was not from a legal background, she had dealt extensively with advocates and lawyers in her work, and with judicial review. She was aware of the legal process. She had been given two options in March 2023, although the Respondent's position was that if she had sought to amend at that stage the claims would already have been out of time. It was unacceptable for the Claimant to make an application to amend after the conclusion of the evidence. The claim had been prepared in a particular way, and the response had. The Claimant had been represented by a solicitor at the November 2023 preliminary hearing (p47). She would no doubt have had advice about what she needed to do. The proposed claims were significantly out of time. It would be grossly unfair to the Respondent to allow the Claimant to amend her claim at this stage, and the prejudice to the Respondent would outweigh any unfairness to the Claimant if she could not amend now. The Respondent submitted that there were issues that it had not addressed in evidence in the way it would have done if the proposed claims had been included; it would need to address different issues not only in closing submissions but with the witnesses

themselves; the Respondent would need to consider not only recalling witnesses but first amending their witness statements; the Respondent would want the amendment in writing to understand the precise claim; the Respondent would want to cross examine the Claimant further; there would be significant costs implications for the Respondent.

13. Having heard the submissions of both parties, we took time to reach our unanimous decision, which was to reject the application to amend. We gave reasons orally at the time. In summary:

    (a) Rule 29 gives the Tribunal a wide power to make case management orders, which can include allowing an amendment.

    (b) In reaching our decision, we took into account the factors set out in Selkent Bus Company Ltd v Moore [1996] ICR 836, namely: (i) the nature of the amendment; (ii) the applicability of time limits; and (iii) the timing and the manner of the application.

    (c) We also considered the guidance in Vaughan v Modality Partnership [2021] ICR 535, which reminds us that the factors in Selkent are not a checklist. Fundamentally, what we must do is to consider the relative injustice and hardship involved in refusing, or granting, an amendment. We should consider the real practical consequences of allowing or refusing an amendment, which should underlie the balancing exercise.

    (d) The claim form in this case was presented to the Tribunal on 14 December 2022. The Claimant ticked the boxes indicating that she was bringing claims for unfair dismissal (later struck out and not relevant to this application) and race discrimination. The information set out in the claim form did complain about the termination of her assignment with the Respondent on 8 July 2022, but did not complain about the incident involving Mrs Josen, and did not mention anything about the Claimant's religion.

    (e) In advance of a preliminary hearing on 15 March 2023, the parties had filed a case management agenda. The Claimant had not identified a claim of discrimination because of, or harassment related to, religious belief.

    (f) At the preliminary hearing on 15 March 2023, the claims had been discussed and identified as being harassment related to race and direct discrimination because of race. The Claimant had described her race as Asian Pakistani. No claim of discrimination because of religious belief or harassment related to religious belief had been identified, but the Claimant had mentioned the incident with Mrs

Josen. The Employment Judge had recorded at paragraph 43 (p39) that the Claimant had accepted that this allegation was not in her claim form. The Claimant had wanted some time to decide whether to make an application for permission to amend her claim to bring a claim about this. It was agreed that if she did wish to apply to amend her claim she would do so by 5 April 2023, and an order was made in this regard at paragraph 7. At paragraph 9, the list of issues was referred to and it was ordered that "*if you think the list is wrong or incomplete, you must write to the Tribunal and the other side by 5 April 2023.*" (p35).

(g) There was a further preliminary hearing on 3 November 2023 before Employment Judge Wedderspoon (p47). The Claimant had been represented by a solicitor. At paragraph 10 of her case management order, Employment Judge Wedderspoon had recorded that the claims and issues to be determined were those listed in the earlier case management summary from March 2023.

(h) On the first morning of the final hearing on 4 December, we had discussed the issues with the parties and had taken them specifically to those issues identified in March 2023 (p40-43). The parties had agreed those were the issues we had to decide.

(i) The Claimant's application sought to add new claims. There were currently no claims relying on the protected characteristic of religious belief. The factual allegation against Mrs Josen was not referred to in the claim form at all, although both the Claimant and Mrs Josen had referred to it in their witness statement.

(j) The timing of the application was very late. We had already heard all the evidence and we were due to hear closing submissions. Our timetable had envisaged that we would then deliberate for the remainder of 6 December, and possibly into 7 December, and (if possible) deliver an oral judgment on 7 December. The application to amend was being made almost a year after the presentation of the claim, and so outside the time limit provided for discrimination and harassment claims by the Equality Act 2010.

(k) The application had been made orally, with no prior warning given to the Respondent, but the Claimant had been able to verbally identify two specific incidents that she sought to rely upon.

(l) We were not necessarily persuaded that the Respondent would need to amend its grounds of resistance if we allowed the amendment. We did however accept that the Respondent would need to be given the opportunity to cross-examine the Claimant on the new

allegations, because a complaint that something was done because of religious belief is different to a complaint that it was done because of race. We also accepted that the Respondent would need an opportunity to recall its own witnesses. Mr Shephard had indicated he would probably require an adjournment to consider whether fresh witness statements were required. This would put the Respondent to additional cost, the witnesses would be prejudiced in having to attend twice, and there would be delay.

(m) On the other hand, if we refused the application, the Claimant would lose her opportunity to bring the complaints as complaints of discrimination because of, or harassment related to, religious belief, but we found that the prejudice to the Respondent outweighed that. Whilst the Claimant had said that she had not understood before 6 December that she could have made an application to amend, we found that paragraph 7 of the Case Management Order of March 2023 had been clear. The difference between relying upon something as background and making a claim had been explained to the Claimant, and it was clear what she needed to do if she wanted to bring a claim about the incident involving Mrs Josen. We took into account that the Claimant had told us she had been unwell between March and November 2023, but she had been well enough to attend mediation and the preliminary hearing in November 2023. She had been legally represented and the solicitors must have taken her instructions and discussed her claims with her to be able to represent her at the mediation that preceded the preliminary hearing.

(n) We also considered that the Claimant herself would be prejudiced if we allowed the amendment, due to the delay that would likely result from an amendment. Even if Mr Shephard on further reflection found that it was possible to recall the Respondent's witnesses to give further evidence on 6 or 7 December, and was happy for that to happen (i.e. without time being taken to draft further witness statements), we considered that it was then unlikely that the hearing could finish on 7 December. The Claimant would then be waiting even longer for an outcome in this case. We noted that at the preliminary hearing in November 2023, Employment Judge Wedderspoon had made reference to the fact that delay can severely affect the veracity of evidence and that the Claimant had said she was very upset by events. The Employment Judge on that occasion had found that it was therefore in the interests of justice that the hearing in December 2023 be retained. That was in the context of considering whether to grant a postponement to allow longer for the parties to comply with remaining directions, there having been some delay during a period of ill-health on the part of the Claimant in the summer.

(o) We therefore refused the application to amend.

Findings of Fact

14. We made the following unanimous findings of fact. Where there was a conflict of evidence, we resolved that on the balance of probabilities.

15. The Respondent is a local authority. It has statutory duties to help prevent and relieve homelessness.

16. In 2022, the Respondent had a contract with Comensura Limited (Comensura) for "Managed Services for Temporary Resources". This meant that if the Housing Options Team required agency workers, they were supposed to use Comensura to find them.

17. In around late May 2022, the Housing Options Team was very busy and wanted to recruit a temporary agency worker to help with the workload. At that time Comensura could not offer any suitable candidates, so Angela Coates (**Ms Coates**), Director of Housing, obtained permission from HR for the Housing Options Team to use a different agency.

How the Claimant came to work at the Respondent

18. On 1 June 2022, the Claimant was introduced to the Respondent by a different employment agency, "Niyaa People" (**Niyaa**), as a potential candidate for the vacancy of a temporary Housing Options Officer (p101).

19. The Claimant has a BA (Hon) Degree in Housing Management and Applied Community Studies. Over the course of her career, she has carried out roles as an Homelessness Officer, Homelessness Prevention Officer or Homeless Options Officer for different local authorities through employment agencies. In 2017, she set up and managed a homeless project for destitute women and men fleeing domestic violence who have no recourse to public funds. By June 2022, it had been about five years since the Claimant had last worked for a local authority.

20. For the purposes of the claim, the Claimant described herself as Asian Pakistani. Although the Claimant explained to us that English is not her first language, she speaks and writes fluent English. We found that it was unlikely that new people meeting the Claimant would have known that English was not the Claimant's first language unless she had told them that.

21. On 7 June 2022, the Claimant was interviewed for the role by Mandy Rashid Housing Options & Lettings Team Leader, (**Ms Rashid**) and by Ms Rashid's line manager, Helen Parton (**Ms Parton**), Housing Services Manager. The interview took place over Microsoft Teams.

22. There was a disagreement between the parties about what had been said at interview about homeworking. We found that it was explained to the Claimant that she would not be able to work from home initially, but that once the Respondent was confident that she understood all of the internal policies and systems, then she was likely to be able to work up to three days from home.

23. It was inherently unlikely that Ms Rashid and Ms Parton would have said to the Claimant that she could work from home right from the start of her assignment. As the Claimant accepted in cross-examination, different local authorities have different processes and policies, and she would need training to learn those of the Respondent. The fact that the Claimant was issued with a laptop and mobile phone a few days after starting her assignment with the Respondent was not inconsistent with Ms Rashid's evidence. It was envisaged that once the Claimant had completed her training and once Ms Rashid was happy she was confident using the Respondent's systems, then Ms Rashid would look to agree a work from home programme with the Claimant. Ms Rashid hoped that would only take a few weeks, and she wanted the Claimant to have the necessary equipment ready. The fact that the Claimant did not at any time during her assignment send an email to Ms Rashid asking why she was not being allowed to work from home, or indeed did not speak to Ms Rashid to ask why she was not being allowed to work from home, was also consistent with her having understood that she would initially be required to work in the office. The Claimant accepted that she did say at interview that she would welcome time in the office because she had been out of an office for a while.

24. Following the interview, Ms Parton emailed Morgan at Niyaa, informing her that the Claimant met the requirements and had said that she could start the following Monday, but asking for the rate of pay as Ms Parton would need to seek the relevant approvals (p107). This was because it was not Ms Rashid's decision how much the Respondent was allowed to spend on an Agency worker. That was a decision for Ms Coates. Morgan from Niyaa replied saying that the all- in charge rate was £38 p/hr. Ms Parton emailed Ms Coates to ask whether she would agree to this rate, and:

    "*It is a lot. Yes. If she is good we won't mind so much. Let's support the team & review in due course.*" (p106).

25. This rate, of £38 p/hr, was £6 more than the rate of £32 p/hr that the Respondent was paying for the existing agency Housing Options Officer, Rashpinder Josen (**Mrs Josen**).

<u>Start of the Claimant's assignment</u>

26. The Claimant started work at the Respondent on Tuesday 14 June 2022.

27. At this time, the other Housing Options Officers in the team were Ms Deborah Suffolk-Heath (**Ms Suffolk-Heath**), Ms Sandra Steikunas (**Ms Steikunas**), and Mrs Josen. Mrs Josen was also an agency worker. Each of these team members worked three days per week at home, and two days a week in the office.

28. The role of Housing Options Officer was a Grade 8 role and we had the job description for the role at page 184-6, and the person specification at p187-9. The overall purpose of the position was to advise customers who contacted the Respondent about the housing options available to them, to assess the needs of homeless applicants and to deliver the services required to meet the Respondent's statutory duties, and to keep cases under review, to assess applicants' circumstances in accordance with the Letting Schemes and to register applications as required, and to collect and collate data about applications and activity on the housing register (p184).

29. There were two primary parts of the role of a Housing Options Officer. First, a Housing Options Officer assigned to deal with the "inbox" was responsible for reviewing emails that came into the relevant team's email inbox and carrying out a triage to decide what needed to happen next. They might need to reply to customers, for example. If there was an application that needed to be taken further that would be placed onto a waiting list. Secondly, once cases had been triaged, those that were on the waiting list, or any that were "Homelessness Reduction Act" (**HRA**) cases would be allocated to a Housing Options Officer to make an appointment with the customer in order to further assess their needs.

30. At around the same time that the Claimant started her assignment with the Respondent, a white British woman Lanah Foley (**LF**) started a role as a Lettings Officer. LF had previously worked elsewhere within the Respondent and she therefore had some familiarity with the Respondent's IT systems, although she had not worked in housing before. We accepted that LF was particularly gregarious and went out of her way to interact with everyone.

31. Ms Rashid in her statement described the Claimant as "quiet calm and reserved", and in this respect "the complete opposite" to LF. We found that Ms Rashid included this in the context of the Claimant having alleged (after the termination of her assignment) that LF had "fitted in" better, and that it represented her genuine impression, having only known the Claimant a few weeks.

32. The role of Lettings Officer, which was the role LF was doing, was a Grade 7 role. This was a lower grade on the Respondent's pay grade than the Housing Options Officer role. We had the job description at page 190- 192, and the Person Specification at page 193-4. The purpose of the Lettings

Officer role was to implement the Council's Letting Scheme, to let the Respondent's vacant properties, provide applicant nominations for Private Registered providers when requested, and to carry out the administrative duties for the Council's emergency accommodation and support residents in temporary accommodation. We found that the roles of Lettings Officer and Housing Options Officer had important differences, although there was some overlap between them (for example we noted that at times the Lettings Officer may be required to assist under the supervision of a Housing Options Officer).

33. During the Claimant's first three days in the office, the other team members Ms Suffolk-Heath, Ms Steikunas and Mrs Josen took turns, depending on who was in the office, to sit with, or near, the Claimant and help her get used to the Respondent's policies and procedures, and IT system. They also sent her templates of documents that they used to request information from customers (e.g. p196-7, template for requesting proofs on 16 June), and introduced the Claimant to the Respondent's "house-style". There was some delay in the Claimant being granted access to all the necessary IT systems, and full access was not enabled until part way through Friday 17 June.

34. At 1pm on 16 June Ms Rashid replied to an email from her line manager Ms Parton in which Ms Parton had asked, amongst other things, how the Claimant was getting on. This was the Claimant's third day at the Respondent, and she did not yet have full access to the Respondent's IT systems. Ms Rashid wrote that the Claimant "*is getting on great. Everyone really likes her. She is very quick to pick things up and is knowledgeable and keen. However, Deb's view is that we should wait a few days to allocate her her own cases, while she is getting used to our systems. She's not worked with Capita before."* (p413)

35. The remainder of Ms Rashid's email addressed Ms Rashid's own workload. She described how "*for the next 4 days I'll be doing 3 jobs",* and "*I honestly don't know how I can do this for 4 days straight."* In a second email at 13.28, in response to Ms Parton suggesting to Ms Rashid that the Housing Options team were now "*fully staffed"* and so should not require so much of her attention, Ms Rashid said that "*The Options Officers have been sitting with* [the Claimant] *for the last 3 days, while carrying out their own duties. They are doing what they can to help me."* We found that Ms Rashid was extremely busy at this time and there appeared to have been some tension between her line manager's impression of how having a new agency member of staff would ease the workload of the team, and the reality on the ground, which was that as is the case when any new person joins the team, the existing team members would initially have to take some time away from their own work in order to help the new person to understand how the Respondent worked. As a result of Ms Rashid being so busy, we find that

training and supporting the Claimant on a day -to- day basis was largely left to Ms Suffolk-Heath, Ms Steikunas and Mrs Josen. This was somewhat ad-hoc, on the job, training.

36. By contrast, Ms Suffolk-Heath, Ms Steikunas and Mrs Josen had no role in training LF. LF's training was largely left to Jane Loveridge, a Lettings Officer.

<u>Being asked to place a call(s) on hold during the first week</u>

37. During the Claimant's first week, there was an occasion when the Claimant was engaged in a telephone call with a customer, and Ms Suffolk-Heath asked the Claimant to place the call on hold. There was disagreement between the parties about why this was and what was said.

38. We accepted Ms Suffolk-Heath's evidence that this related to a customer that Ms Suffolk-Heath had dealt with before, who lived in Crawley, had cancer and wanted to move closer to his family. She asked the Claimant to put the customer on hold because she could overhear that it was a difficult conversation, and to offer advice and support to the Claimant as she had dealt with the customer before. This was something Ms Suffolk-Heath had done in the past with other new starters.

39. Bearing in mind the nature of the Respondent's work, and that it will sometimes involve dealing with people in very difficult circumstances who may become angry or upset, it seemed to us quite likely that this was something that Ms Suffolk-Heath would have done with the Claimant and other new starters. Further, the email correspondence that we had in the bundle between Ms Suffolk-Heath and the Claimant was consistent with Ms Suffolk-Heath being someone who tried her best to support the Claimant. The Claimant could not recall much about the customer's circumstances, although she accepted that it was a customer who wanted to move closer to his family.

40. The Claimant also said that there was a second occasion during the first week where Ms Suffolk-Heath asked her to put a customer on hold, and asked her whether she knew what she was going to say. Ms Suffolk-Heath could not recall asking the Claimant to put a second call on hold, but said that if she had done, it would only have been to offer support. We found that there may have been a second occasion where Ms Suffolk-Heath asked the Claimant to put a customer on hold during that first week, but we accepted that this would again have been to offer support. This was something Ms Suffolk-Heath had in the past done with other new starters, and again we found her account to be consistent with the supportive nature of the correspondence in the bundle.

Addressing a standard letter in the first week

41. There was a disagreement between the parties about whether in the first week, Ms Steikunas had told the Claimant to delete an initial when addressing a standard letter and had told her that this was not polite, without giving her a chance to explain why she had done this. The Claimant's case was that this was Ms Steikunas correcting the Claimant's English. Ms Steikunas accepted that she had introduced the Claimant to the Respondent's corporate style letters, but denied that she had said that it was not polite to address people by their initial as well as their first name.

42. We preferred Ms Steikunas's evidence about this. Her evidence is consistent with the emails that we had in the bundle where she sent a template to Ms Suffolk-Heath to be forwarded to the Claimant (p196-7). Those emails do not suggest that she was prescriptive about exactly how to address a customer. Ms Steikunas also explained to us that English is her third language. She regarded the Claimant's English as better than her own. We accepted that it was unlikely she would have corrected the Claimant's English. As we have found above, it would have been unlikely that someone meeting the Claimant would have been aware that English was not her first language, unless she had told them.

Supervision of work by Ms Steikunas

43. On 17 June 2022, Mrs Josen emailed the Claimant to ask her to carry out some tasks (p219-220, p223), including calling particular customers back to discuss their housing applications.

44. On 17 June 2022, a customer emailed the Claimant asking her about a letter that they had received, which suggested that they were in rent arrears. The customer asked the Claimant to confirm whether this was an error, or whether that information had been provided by their landlord. The Claimant replied to the customer, confirming that the paragraph relating to rent arrears had been sent in error and apologising for that (p221**).** There was insufficient evidence for us to understand who had made the underlying error, but we found that what this did show is that by 17 June 2022 the Claimant was making calls to customers and taking action herself to respond to them.

45. On Tuesday 21 June 2022, it was the Claimant's sixth day in the office, and her second full day with access to all IT systems. At 9.22 in the morning, Ms Suffolk-Heath emailed Ms Steikunas: "*Hi Sandra. How did it go yesterday? Is* [the Claimant] *going to be doing the inbox today with our help? Do you think I should swap my day and go in Wednesday?"* (p418). Ms Steikunas replied at 9.27 to say that the Claimant had been "*doing inbox all day yesterday, she is quite good with enquiries but still tiny bit slow with all*

the systems and spreadsheets, but she is definitely getting there! Me and Mandy thought that she could keep continue doing inbox today and maybe if Rashpinder has something interesting to show about casework, she could show it to her as well." Ms Steikunas said that she thought it would be a good idea for Ms Suffolk-Heath to be in the office on Wednesday, "*then me Thursday and you Friday so we could be always by her side if needed."* (p417).

46. On Tuesday 21st June 2022, Ms Steikunas emailed the Claimant at 10.50: "*How you are doing this morning? Finding all ok? Or need any help / advice?".* The Claimant replied "*Thank you for asking. I am contacting customers this morning and so far it has been ok. Can I email you when I start to struggle?"* Ms Steikunas replied "*Of course you can",* followed by a smiley face emoji (p234). At 12.56 Ms Steikunas emailed Ms Suffolk-Heath saying that she was leaving all enquiries in the inbox to the Claimant to act on. She referred to her email to the Claimant earlier that morning and said "*it seems she is doing ok as I haven't received any contact from her. However I did marked one email as urgent so you might want to keep an eye on it."* (p419).

47. On the afternoon of 21 June, Ms Suffolk-Heath emailed the Claimant "*Hi Rahila. If you need any help with anything in the inbox just let me know"* (p237). The Claimant replied a couple of hours later at 16.57, "*Hi Deb. Thank you for asking. Yes please."* (p237). At 17.00, Ms Suffolk-Heath emailed the Claimant "*I will sort out* [customer name] *and we can leave* [customer name] *until tomorrow, if you can just complete* [customer name]." We thought that this email showed Ms Suffolk-Heath to be a supportive and responsive colleague.

48. On 22 June 2022, Mrs Josen emailed the Claimant at 9.29 "*Good morning. Shout if you need any help with the inbox. Many thanks and kind regards."* (p239).

49. On the morning of 22 June, Ms Suffolk-Heath emailed Ms Rashid, informing her that there were 12 cases from May that were on the waiting list but had yet to be allocated to a Housing Options Officer, and that from June there were 22 cases on the waiting list and 1 HRA case that had yet to be allocated. (p420).

50. On 24 June 2022, Ms Suffolk-Heath emailed Ms Rashid, Ms Steikunas and Mrs Josen setting out who would be in the office and covering the inbox in the following week. She said that the Claimant "*will be on the inbox but whoever is in the office can support* [her] *on those days…"* (p427). Mrs Josen was the person listed as being in the office / inbox on Friday of the following week, i.e., 1 July 2022.

51. There was disagreement between the parties about whether Ms Steikunas checked all of the Claimant's work throughout her assignment. We found that she did not. Ms Steikunas only worked in the office on Mondays and Thursdays, and we find she could not therefore have possibly checked all of the Claimant's work. She only spent five days in the office with the Claimant throughout the whole of the Claimant's assignment. We also found that the emails that we have already referred were inconsistent with the Claimant's suggestion that Ms Steikunas checked all her work. It is clear that by the second week, the Claimant was engaged in work reviewing the inbox and having some calls with customers and that whilst she was being offered support if she needed it, she was not being watched or checked at all times. We noted in particular the emails at p417 and 419.

Deborah Suffolk-Heath: what did she say to the Claimant in the second week?

52. There was also disagreement about whether in the second week of the Claimant's assignment Ms Suffolk-Heath said that she could not make calls to customers unless there was someone in the office to listen to the calls and make sure that she was asking the correct questions.

53. We accepted Ms Suffolk-Heath's evidence that she did not say this. It would not have made sense for her to say this because that was not what was happening. It is clear from the emails that we have already referred to that the Claimant was being allowed to speak to customers, and that whilst she was being offered support she did not have someone listening in to every call or checking everything she did.

54. The Claimant said in oral evidence that during the second week of her assignment she had sent emails to the agency complaining about how she had been treated, but we found that did not happen. No such emails were produced to the Tribunal. The Claimant's initial explanation for not disclosing such emails was that she had sent them from the email address that she used whilst working at the Respondent, but if it had been the case that she had sent emails from her Respondent email address to the agency then it is likely they would have been produced. The Respondent has produced other emails that the Claimant sent to the agency from the Respondent's email address during her assignment. The Claimant then said that she could not recall if she had sent the emails from her personal email address or her work email address and that she may have deleted them. We did not understand why the Claimant would delete emails to the agency, if they showed her making complaints about the way she had been treated at the time of the alleged treatment.

Week 3

55. On Monday 27 June 2022 the Claimant attended work in the morning but mentioned to Ms Rashid that she was feeling unwell. At 1.07pm, the Claimant emailed Ms Rashid: "*Hi Mandy. I am feeling a little worse, will go out and get some paracetamol. Is it worth ensuring I can work from home should I feel worse as the day progresses.*" Ms Rashid replied: "*I'm sorry to hear that you are still feeling unwell. Please go home if you wish to. I wouldn't be concerned about working from home in the circumstances. Just return to the office, when you are feeling better.*" (p319). We found that this was a supportive response by a manager who had been told someone's health was deteriorating throughout the day.

56. At 4.07pm on Tuesday 28 June 2022, Ms Rashid emailed Ms Suffolk-Heath: "*Hi Deb. Helen is quite insistent now that* [the Claimant] *starts to establish her own case load. So from tomorrow please can she be allocated some basic waiting list cases? I know she will still need a lot of guidance, but I suppose she needs to start and gain knowledge of processing applications.*" (p428). "Helen" was a reference to Ms Parton, Ms Rashid's line manager. We find that by this stage, Ms Rashid was coming under some pressure from her line manager to have all members of the Housing Options Officer Team fully up and running in the very near future. Ms Suffolk-Heath replied to say she would allocate some tomorrow.

57. On Wednesday 29 June 2022, Ms Suffolk-Heath emailed Ms Steikunas, Mrs Josen and the Claimant. The title of the email was "allocations", and it set out the cases which were allocated to each Housing Options officer for that week. The Claimant was allocated three cases, all from the waiting list. This was the first time that the Claimant had been allocated particular cases to assess (p352). Whilst the Claimant had said in her witness statement that she was never given a caseload, this email shows that to be incorrect, although she did not in fact start working on the cases due to becoming ill. The correspondence that we have seen suggests that the Respondent was actually very keen for the Claimant start working on a caseload. Later that day, Ms Suffolk-Heath sent to the Claimant a Housing Advice Homeless Enquiry Checklist (p352).

58. Ms Suffolk-Heath also sent an email to Ms Rashid, advising her that there were 20 June cases on the waiting list that had not yet been allocated to an officer (p429).

59. At 16.12 on 30 June 2022, Ms Suffolk-Heath sent a temporary rota "for the next few weeks" to Ms Steikunas, Mrs Josen, and the Claimant. She also asked that on their inbox days they attached any documents "*straight to IBS in images ready for allocation please before creating a folder and filing in waiting list / HRA.*" (p430). Mrs Josen replied asking if the rota started the

following day (Friday), or following week, and Mrs Suffolk -Heath replied, saying that "*from next week*" the Claimant would be taking cases and that "*we will need to sit with* [the Claimant] *whilst she completes the phone appointment and help with the paperwork……Then from the week after* [the Claimant] *will do the appointments independently but will still require help with paperwork, just waiting list cases only."* (p430).

What did Ms Suffolk-Heath say to the Claimant in week 3?

60. There was some dispute as to whether during the third week of her assignment, Ms Suffolk-Heath told the Claimant she had to work from the office so that people could watch her, when it had previously been agreed that she could work from home.

61. We found that Ms Suffolk-Heath told the Claimant that someone would be in the office to sit with her the following week because it was going to be her first week of carrying out appointments with the customer in which she assessed their requirements. This was consistent with the email she had sent to Mrs Josen. This was something that the Housing Options Officer Team had done with other new starters in the past, and we accepted that it was to make sure that the Claimant had support with a task that she would not previously have carried out at the Respondent, using the Respondent's processes and system.

62. We accepted Ms Suffolk-Heath's evidence that she did not say to the Claimant that the Claimant had to work from the office. Deciding where the Claimant was able to work was not within Ms Suffolk-Heath's remit. That was something that could only be decided by someone more senior to her. We did not think Ms Suffolk-Heath would have had any reason to tell the Claimant she had to work in the office, because as far as Ms Suffolk-Heath had been able to see, the Claimant was working in the office during her training period. This was what had been discussed with the Claimant at her interview.

Friday 1 July - Lunch

63. On Friday 1 July, Mrs Josen and the Claimant were in the office. LF was also there. Mrs Josen invited the Claimant to order some lunch from a nearby café, and we found that when the Claimant declined, Mrs Josen initially tried to encourage her to change her mind, and then called her a "spoilsport".

64. Whilst Mrs Josen said that she could not remember saying this to the Claimant, she frankly accepted that this was a word that she would use, and that she probably did say it. She wanted the Claimant to feel included. Whilst, as Mrs Josen accepted, this was a silly thing to say, we find that it

was a misplaced attempt at humour and an attempt to make the Claimant feel part of the group, by attempting to share a joke with her.

65. We found that whilst the Claimant may have said that the reason she was not ordering was because there was nothing Halal on the menu, Mrs Josen did not hear the Claimant say that. We accepted Mrs Josen's evidence that if she had heard the Claimant say that, she would not have tried to encourage the Claimant to order. Mrs Josen herself was vegetarian and we accepted that she would not have pressed someone to order if they had dietary requirements that could not be met. We noted that the Claimant can be softly spoken, and that in an office environment there will sometimes be things said that are not fully heard. We also found that the Claimant did not appear upset at the time of the exchange. It was not something that troubled her enough to raise it in her later correspondence with the Respondent, or in her claim form. It was only mentioned several months later, in March 2023.

<u>Mrs Josen's corrections of the Claimant's work on 1 July</u>

66. On 1 July 2022, Mrs Josen sent the Claimant a series of emails about cases that the Claimant had triaged through the inbox:

(a) At 14.57.10 Mrs Josen emailed the Claimant about a customer's application: "*Hi. I have just checked the fastpath: 1. This should be blue on the fastpath. 2. There are 2 previous applications so please note these on the diary note."* (p374).

(b) At 14.57.15 Mrs Josen emailed the Claimant about a different customer: "*Hi. I have just checked the fastpath: 1. As there are no previous diary applications, in the diary note please state that it is a new application – this should be the first line in the diary note. Regards…"* (p376).

(c) At 14.57.19 Mrs Josen emailed the Claimant about a third customer: "*Hi. I have checked the fastpath: 1. Please add the son. 2. As there are no previous applications, in the diary note please state that it is a new application – this should be the first line in the diary note. 3. Regards …."* (p378)

(d) At 14.57.21 Mrs Josen emailed the Claimant about a fourth customer: "*Hi. I have checked the fastpath: 1. Please add the son. 2. As there are no previous applications, in the diary note please state that it is a new application – this should be the first line in the diary note."* (p380).

(e) At 14.57.24 Mrs Josen emailed the Claimant about a fifth customer: "*Hi. I have checked the fastpath: 1. Please add the notes to the diary from*

the enquiry form. 2. Including your actions. 3. Please add the daughter." (p382).

67. We accepted Mrs Josen's evidence that she genuinely believed she had overall responsibility for ensuring that the inbox enquiries on 1 July had been properly dealt with. This is consistent with the fact that she was allocated to "inbox" on the rota for that day. She had also been asked to continue to support the Claimant, who had not yet completed her full training with the Respondent. We accepted that this is why she was reviewing the diary notes made by the Claimant on 1 July. Mrs Josen herself accepted that she was wrong when she said that a child needed to be added on one of the enquiries, and she admitted to the Claimant on the day that she had noted this in error due to rushing. We found however that the other "corrections" raised by Mrs Josen were things that needed to be changed in order to bring the Claimant's diary notes into line with the Respondent's policies and ways of doing things. This did not mean that the Claimant was being criticised for her standard of English. Rather, the Respondent, as a local authority with statutory duties, had a particular form of recording not only what discussion had taken place with a customer, but also things such as whether this was a new application, and what actions had been taken or needed to be taken next. The Claimant herself, when writing later to the Respondent, did not take issue with Mrs Josen's corrections apart from in so far as Mrs Josen had wrongly suggested the addition of a child (p58).

68. The Claimant said in her oral evidence that she had phoned Tiyana at the agency on 1 July and had told her in great detail what had happened at the Respondent and that she believed Tiyana had contacted the Respondent on her behalf. The Claimant did not tell us what she actually told Tiyana, and we had no evidence from Tiyana. There is no evidence that the agency contacted the Respondent to raise any concerns on behalf of the Claimant.

69. Later that afternoon, at 4.36pm, the Claimant emailed Ms Rashid asking for annual leave on 8 and 11 July 2022: "*Hi Mandy. Sorry for the short notice. I completely forgot to let you know we are celebrating Eid end of next week and would appreciate two days off."* (p384).

70. Ms Rashid forwarded this leave request to her line manager Ms Parton: "*Please see below,* [the Claimant's] *request for leave for next week. Angela told me she is on 38 an hour. I nearly died!. I assumed we have no choice but to agree to it, like we do with Rashpinder."* (p431). Ms Parton replied saying that "*we don't really have much choice but it is very unfortunate. How is she getting on and how many cases does she have? I think she could have given us more notice. The 38.00 includes an amount that goes to the Agency."* At 17.25 that evening Ms Rashid wrote back saying that the Claimant had been given three waiting list cases that week and would be given more next week. She wrote: "*I spoke to her earlier and she seems to*

have grasped it. She did suggest a couple of refuges to me earlier too. I would not necessarily want her here permanently. Well not so far anyway." We can understand why the Claimant reading the last part of that email may now feel upset, but overall we found that this was a fairly balanced assessment by Ms Rashid who had herself been very busy and was being asked to provide a view by email on an agency worker who had only been carrying out work for 3 weeks.

<u>Ms Coates' experience of recruitment</u>

71. In around mid-June 2022, Ms Coates had been asked to recruit temporary Housing Options Officers for a specialist team who would deal with people from Ukraine who required housing across the County. Although Ms Coates had responsibility for the budget, she did not usually get directly involved in the recruitment of Housing Options Officers, instead delegating that to Ms Parton and Ms Rashid, but she did on this occasion because of the specialist nature of the project. On 20 June 2022, Ms Coates placed an order with Comensura for a temporary Housing Options Officer. Comensura provided Ms Coates with details of experienced applicants, and informed Ms Coates in advance of planned interviews that the cost would be £25 per hour (p111). Ms Coates raised some queries about whether this was the full cost to the Respondent.

72. During the week commencing 27 June 2022, Ms Coates met with Ms Rashid, and during the discussion she spoke with Ms Rashid about how the Claimant was getting on. By this stage Ms Coates believed she could probably get agency workers for less, and was keen to do so if she could, and she left Ms Rashid with the impression that the Housing Options Officer Team did not have to retain the Claimant.

73. On 1 July 2022, Ms Coates received confirmation that the cost to the Respondent of agency workers through Comensura would be £25 per hour (p112).

Fourth week

74. At 7.48 on Monday 4 July 2022, the Claimant emailed Ms Parton and Ms Rashid, saying that she had been unwell over the weekend and had tested positive for Covid. We did not consider the tone of that email to be consistent with someone who was by this stage very unhappy working for the Respondent.

75. Ms Parton replied, saying she was sorry the Claimant had been unwell, and that if she had tested positive she would need to stay at home. She concluded "*please keep in touch with* [Ms Rashid] *and I. If you feel well, and have a lap top, we could look to enable you to work from home."* (p439-

440). This, we found, was consistent with the evidence of Ms Rashid that it had been envisaged that after an initial period of training, homeworking could hopefully start.

76. During the second day of the Claimant's absence, it was discovered that the Claimant had made an error in a piece of work. On 5 July 2022, Ms Coates received an email from a customer asking why she had received a letter asking her to provide proof of identity, income and notice to leave when she was already housed by the Council. Ms Coates, who was the Director, replied to the customer saying she had asked the Team Leader to reply, and accepting that the customer should not have received that request. Ms Coates sent the customer's email to Ms Rashid, who replied saying that she had checked the records and that the Claimant "*had contacted the Tenant directly in error, not realizing she is an existing Tenant*" (p435). Ms Coates sent the customer's email and her reply to Ms Parton, saying she had asked Ms Rashid to reply and that there was "*some feedback to pick up with regard to applications from our tenants rather than none tenants.*" Ms Parton replied to say that "*unfortunately* [the Claimant] *picked up the enquiry and dealt with it as a general housing application.* [Ms Rashid] *has now corrected this….when* [the Claimant] *returns we will let her know how she needs to deal with these types of request in future.*" (p433).

77. We accepted the evidence of Ms Suffolk-Health, Ms Steikunas and Ms Rashid that Ms Rashid spoke with Ms Suffolk-Heath and Ms Steikunas about how the Claimant was getting on. We accepted that neither Ms Suffolk-Heath or Ms Steikunas complained about the Claimant, but that they did give feedback. Ms Steikunas felt that it was very time consuming to do her own work and then to be involved in training staff and we found that she did say that to Ms Rashid. The Claimant had not used the Respondent's system before and it was getting used to that system that was taking the time. We accepted that Ms Suffolk-Heath also gave feedback that the Claimant was getting used to the system. Due to the Claimant's absence due to ill-health, Ms Suffolk-Heath had had to re-do the rota, and re-allocate the work amongst the existing team members. If the Claimant returned, there would still be a further period of training and time getting used to the Respondent's system before the Respondent felt comfortable giving her a full workload.

78. On 7 July 2022, Ms Rashid met with Ms Coates. Ms Coates asked Ms Rashid how it was going with the Claimant, and Ms Rashid told her that she did not feel it would be a help to retain the Claimant. We accepted Ms Rashid's evidence that there had in the past been other agency workers who had their assignments terminated after a short period.

79. We found that by 7 July 2022, and having found out that there were cheaper agency workers available, Ms Coates had already decided that it was no longer appropriate to pay £38 per hour for an agency worker.

80. We found Ms Coates to be a measured and credible witness. We accepted that the decision to terminate the Claimant's assignment was made by Ms Coates and that she had already decided to do this by the time she spoke to Ms Rashid on 7 July. We found that in her conversation with Ms Rashid, she told Ms Rashid of her decision to end the Claimant's assignment. That is consistent with the fact that Ms Rashid later sent a "delete user" form to IT in respect of the Claimant. It is also consistent with the fact that Ms Rashid's line manager, Ms Parton, expressed some shock when she learned of the decision to dismiss, because it had been taken by Ms Coates without her input (p438). We will address what we find to be the reason for the termination of the assignment in our conclusions.

81. We accepted that Ms Coates was unaware that the Claimant had requested leave to celebrate Eid. This is consistent with the fact the emails concerning the holiday request were not sent to her and that her role as Director would not involve her in holiday requests.

82. At 18.29 on 7 July 2022, Ms Rashid emailed Ms Parton. She said that with the Claimant "*not being in this week, several things have come to light that we have had to address and deal with. Deb and Sandra advised me that it has been extremely time consuming over the last couple of weeks, and it appears that despite our best efforts, many mistakes have been made. Therefore, we do not wish to continue with her placement. The girls are fully aware of the implications of terminating her contract, but feel it will lead to less mistakes to rectify, than it would be a help to retain her. When I had my voids meeting with Angela earlier today, she asked me how it was going. I had to be honest with her and said I was going to let you how we felt. She was fine and very accepting of it. She had hinted last week, that if we were at all unsure, then we didn't have to proceed"* (p437). We found that the reference to "*the girls*" being "*fully aware of the implications"* was a reference to the fact that Ms Suffolk-Heath and Ms Steikunas would be aware that if the Claimant's assignment was terminated, there would be no additional person to assist with workload unless and until a new agency worker was appointed.

83. On 8 July 2022, Ms Coates emailed Tiyana at Niyaa, informing her that the Claimant was no longer required:

   "*Following discussions with the team we have decided not to continue with the commission we have set up with you for Rahila Ayub. She has not been in work this week because she is ill. Please let her know that we don't require her to return to the office next week. We will need to arrange for her*

to return the laptop we have provided for her to do homeworking. We are reviewing our requirements for this role & will let you know if we require your assistance with recruitment. Please thank Rahila for the work that she did for us." (p121).

84. At 9.42 on 8 July, the Claimant emailed Ms Parton, Ms Rashid and the general "Housing Options" email address, which meant that her email was received by the whole team. The Claimant had by this time been told by the agency that she was no longer required and should return her laptop. She was surprised and insulted. She had long experience working in homelessness elsewhere, and this was the first time she had ever had an assignment terminated. The agency had not explained to her why her assignment had been terminated. We considered that if someone is not given the reason for the termination of their assignment, it is understandable that they will search for it and wonder what has happened.

85. The Claimant, who we found had felt insulted in particular by Mrs Josen's corrections of her by email on 1 July 2022, said that she wanted to inform the Respondent of a few issues (p439). She did not refer in this email to the lunch incident with Mrs Josen on 1 July, but did complain generally about the training that she had received. She said that "*the only positive thing I can take from my short time at Warwickshire was that Mandy* [i.e. Ms Rashid] *did not have the same attitude to my work or at least I did not notice. As my Team Leader she had a positive attitude to my work and it was the only reason I remained as long as I did."*

86. It is clear that the team were shocked by the Claimant's email. Mrs Josen sent an email to Ms Rashid the same day, explaining that she had thought they had had a friendly relationship. We thought this was an open, honest and constructive email (p57).

87. A few days later on 12 July, the Claimant sent a further email in which she described being "*greeted with respect by Mandy who also made me feel part of the team. Helen was equally as pleasant. However they were not involved in my training."* (p52).

88. The Claimant and the Respondent engaged in further correspondence. On 22 July 2022, Ms Coates wrote to the Claimant informing her that the decision to terminate the assignment had been made on grounds of cost (p61-2). The Claimant's complaints were subsequently investigated as a grievance (p99-100).

89. Following the termination of the Claimant's assignment, a new agency worker was recruited to the Housing Options Officer Team via Comensura, at the hourly rate of £25. Whilst Ms Coates was unable to recall exactly when this was, we accepted her evidence that it was shortly afterwards.

90. On 5 October 2022 the Claimant contacted ACAS for the purposes of early conciliation, and an early conciliation certificate was issued on 15 November 2022.

Submissions

91. Both parties provided us with written submissions, which we read. Mr Shephard also provided a bundle of authorities. In addition, each party made oral submissions, although the Claimant explained that her submissions were contained mainly in her written submissions.

92. We considered all of the submissions by the parties. We have not set the submissions out in full in these written reasons, but in summary:

   (a) Mr Shephard on behalf of the Respondent referred us to the following authorities: Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686, Abercrombie & Fitch Italia Srl v Bordonaro [2017] IRLR 1018, Bahl v Law Society ['2004] IRLR 799, Madden v Preferred Technical Group [2005] IRLR 46, Nikolava v M & P Enterprises London UKEAT/0293/15/DM, Madarassy v Nomura International plc [2007] EWCA Civ 33, Richmond Pharmacology v Dhaliwal [2009] IRLR 336, Warby v Wunda Group UKEAT/0434/11/CEA. He submitted that all the claims apart from that relating to the termination of the Claimant's assignment were out of time, that there was no continuing act, and that it would not be just and equitable to extend time. Where there were differences between the parties as to what had happened, or what had been said, he invited us to prefer the evidence of the Respondent's witnesses. He submitted that the Claimant had not been treated less favourably, that the Claimant established facts from which we could infer that any less favourable treatment was because of race, and that any treatment was not because of race. He submitted that the treatment that the Claimant complained of did not have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment, that the Claimant had not established facts from which we could conclude any conduct was related to race, and that it was not related to race. In oral submissions, he expanded on his reasons for making these arguments.

   (b) Where there were differences in the evidence given by the Claimant and the Respondent's witnesses, the Claimant submitted that we should accept her evidence. She alleged that the people named in her allegations had treated her less favourably than they treated LF and than they would have treated another new starter. She submitted that Ms Coates had ended her assignment because she was not accepted by the team, and that this had been due to her

race, religion[1] and appearance. The Claimant referred in particular to the fact that Ms Rashid had met with Ms Coates on 7 July, and to the fact that she was notified that her assignment was being terminated on 8 July, a day that she had booked as annual leave to celebrate the religious festival of Eid. The Claimant submitted that Ms Rashid had unfairly compared her to LF, and that the Claimant had been treated differently to LF, in particular she had been closely supervised and monitored, and other officers had been instructed to check the Claimant's diary notes for errors and to listen to her calls. The Claimant referred to Ms Rashid's positive appraisal of her in her email on 16 June, and the more negative comment on 1 July that she would not necessarily want the Claimant there permanently. She submitted that there were evidential discrepancies in the motivation to end her placement. The Claimant submitted that if she had been white British, not religiously dressed, her contract would not have been terminated and she would have had the opportunity to work until the end of her contract. In answer to a question from the Tribunal, the Claimant identified the facts that she relied upon as establishing that the way she had been treated was because of, or related to, face as being: that she had been told how to speak, had been asked if she knew what to say, her diary notes had been checked to see if she was writing correctly. The Claimant said that it was clear that because of her race it was assumed she was not able to do these things.

<u>Law</u>

<u>Time limits</u>

93. The time limit for bringing a claim of direct discrimination, harassment or victimisation is set out at Sections 123 and 140B of the Equality Act 2010 (**EA**).

94. Section 123 provides (so far as is relevant to this case):

"*Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—*

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

(b)such other period as the employment tribunal thinks just and equitable.

[1] As set out earlier, we rejected the application to amend the claim to include a claim of discrimination because of religious belief.

..

(3) For the purposes of this section—

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

(b)failure to do something is to be treated as occurring when the person in question decided on it.

95. Section 140B provides (so far as relevant) that in working out when the time limit set by Section 123 (1) (a) expires, the period beginning with the day on which the Claimant notified ACAS for the purpose of early conciliation and the day the certificate was issued is not to be counted (Section 140B (3) – (5)).

96. The key issue in deciding whether there was a continuing act of discrimination (Section 123 (3) of the EA) is whether there was an ongoing situation or continuing state of affairs which amounted to discrimination (<u>Hendricks v Metropolitan Police Comr</u> [2002] IRLR 1686).

97. It will also be appropriate to have regard to (a) the nature and conduct of the discriminatory conduct of which complaint is made, and (b) the status or position of the person responsible for it. A single person being responsible for discriminatory acts is a relevant, but not conclusive, factor (<u>Aziz v FDA</u> [2010] EWCA Civ 304).

98. When deciding whether it is just and equitable to extend time (Section 123 (1) (b)), factors which are almost always relevant to consider when exercising any discretion are: (a) the length of, and reasons for, the delay; (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh) (<u>Abertawe Bro Morwannwg University Local Health Board v Morgan</u> [2018] EWCA Civ 640; <u>Adedeji v University Hospitals Birmingham NHS Foundation Trust</u> [2021] EWCA Civ 23).

<u>Burden of proof</u>

99. Section 136 of the EA provides:

(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.

100. In Igen v Wong [2005] IRLR 258, the Court of Appeal set out guidance on the approach to be taken to the burden of proof, although noting that such guidance was no replacement for the statutory wording. The guidance refers to sex discrimination but applies equally to claims of discrimination involving other protected characteristics.

101. In Madarassy v Nomura International plc [2007] IRLR 246, Mummery LJ stated (at paragraph 56) that "*the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that on the balance of probabilities, the respondent had committed an unlawful act of discrimination."* In Greater Manchester Police v Bailey [2017] EWCA Civ 425, the Court of Appeal held (at paragraph 29) that: "*it is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act."*

102. Where an employer behaves unreasonably, that does not mean that there has been discrimination, but it may be evidence supporting an inference of discrimination if there is nothing else to explain the behaviour (Anya v University of Oxford and anor [2001] ICR 847, CA).

103. There are cases where it might be appropriate for the tribunal to go straight to the second stage of considering the subjective reasons which caused the employer to act as he did (Laing v Manchester City Council [2006] IRLR 748).

104. In Hewage v Grampian Health Board [2012] UKSC 37, Lord Hope stated that the burden of proof provisions:

"*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 another."*

105. In Field v Steve Pye & Co (KL) Ltd and others [2022] IRLR 948, His Honour Judge Taylor noted that it is important not to ignore the statement in Hewage that the burden of proof requires careful consideration if there is room for doubt.

Harassment

106. The Court of Appeal gave guidance as to the approach to be taken to harassment claims in Pemberton v Inwood [2018] EWCA Civ 564 (Underhill LJ at paragraph 88). The Court of Appeal referred in that case to Richmond Pharmacology v Dhaliwal [2009] IRLR 336. In Richmond, the

EAT stated that: "*Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred) it is also important not to encourage a culture of hypersensitivity, or the imposition of legal liability in respect of every unfortunate phrase.*"

107. In deciding whether something is "related to" a protected characteristic, context is of great importance (Warby v Wunda Group Plc UKEAT/0434/11/CEA). The term "related to" 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 (Hartley v Foreign and Commonwealth Office Services UKEAT/0033/15/LA).

Direct discrimination because of race

108. Section 212 (1) provides that "*'detriment' does not (subject to subsection (5), include conduct which amounts to harassment.*" Section 212 (5) is not relevant to the present case.

109. Section 13 of the EA provides:

(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.

110. Section 23 provides:

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

111. If a claimant fails to prove facts from which the tribunal could conclude that he has been discriminated against, the claim must fail.

112. If a claimant does prove facts from which the tribunal could conclude that he has been discriminated against, then the burden shifts to the employer to show an adequate non-discriminatory reason for the difference in treatment. The employer must show that the protected characteristic was in no sense whatsoever the reason for the difference in treatment. This requires a consideration of the subjective reasons which caused the

employer to act as he did (Shamoon v Chief Constable of the Royal Ulster Constabulary [2006] IRLR 748).

113. In Nagarajan v London Regional Transport [1999] IRLR 572, Lord Nicholls addressed the issue of subconscious motivation, noting that:

"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. Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of s.1(1)(a). The employer treated the complainant less favourably on racial grounds. Such conduct also falls within the purpose of the legislation. Members of racial groups need protection from conduct driven by unrecognised prejudice as much as from conscious and deliberate discrimination. Balcombe LJ adverted to an instance of this in West Midlands Passenger Transport Executive v Singh [1988] IRLR 186, 188. He said that a high rate of failure to achieve promotion by members of a particular racial group may indicate that 'the real reason for refusal is a conscious or unconscious racial attitude which involves stereotyped assumptions' about members of the group."

Conclusions

114. The effect of Section 212 (1) is that something that is harassment cannot also be less favourable treatment (detriment), and we therefore first reached out conclusions on the harassment claims, before turning to the issue of direct discrimination. We addressed our conclusions on each of the allegations in turn. Our conclusions on time limits are set out at the end of these reasons.

Allegation 1: Micro-management of the Claimant by Ms Suffolk-Heath when carrying out the simple task of calling a customer and not letting her call a customer without listening and watching throughout a call and advising how to answer questions (from week 1).

115. As set out in our findings of fact, there was certainly one occasion where Ms Suffolk-Heath asked the Claimant to place a customer on hold.

This was in the context that Ms Suffolk-Heath had dealt with this customer before, and he was a customer in complex circumstances. Ms Suffolk-Heath could overhear that it was a difficult situation, and she intended to offer advice and support to the Claimant, which was something she had done in the past with other new starters. We found that there may also have been a second occasion, when Ms Suffolk-Heath similarly asked the Claimant to place a customer on hold, again to offer support as she had done in the past with other new starters. We did not conclude that this amounted to micro-management of the Claimant..

Harassment

116. We found that Ms Suffolk-Heath's interventions in asking the Claimant to place the customer on hold were unwanted conduct from the Claimant's perspective. The Claimant had a lot of past experience in housing, and she did not think that other people needed to be present to give her advice.

117. We did not however conclude that Ms Suffolk-Heath did this with the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. Ms Suffolk-Heath intended to offer support to the Claimant. Nor did we think it had the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her, having regards to the perception of the claimant, the other circumstances of the case, in particular the fact that it was the Claimant's first week in a new organisation. We did not think it reasonable for the conduct to have that effect. We concluded that it was normal for new starters to be offered guidance and assistance by more experienced staff members at the start of a new assignment.

118. Further, the Claimant had not proved facts from which we could conclude that Ms Suffolk-Heath's interventions related to race. On our findings of fact, there was nothing in what Ms Suffolk-Heath said that was related to race. Further, we accepted Ms Suffolk-Heath's explanation that the reason why she intervened was to support and that she had done the same and would have done the same for another new starter.

Direct discrimination

119. Having concluded that Ms Suffolk-Heath had not harassed the Claimant, we went on to consider whether Ms Suffolk-Heath's interventions amounted to direct discrimination because of race.

120. The Claimant sought to compare herself with LF. We concluded that LF was in a materially different role. She was also being trained and

supervised by a different person. Ms Suffolk-Heath did not train LF. We concluded that these were material differences between LF's circumstances and those of the Claimant, and that LF could not be relied upon as an actual comparator for the purposes of this allegation.

121. Further, and for the same reasons explained in relation to the harassment claim, we concluded that the Claimant had not proved facts from which we could conclude that Ms Suffolk-Heath acted as she did because of the Claimant's race. We concluded that she intervened because she genuinely was trying to offer support as she would with any new starter.

Conclusion on allegation 1

122. We therefore concluded that in respect of allegation 1, the claims of direct discrimination because of race and harassment related to race, were not well-founded.

Allegation 2: Being told how to address a standard letter by Ms Steikunas and saying that the way the Claimant was addressing the letter was not polite and not allowing the Claimant to explain why she was doing this (end of week 1).

123. As explained in our findings of fact, we preferred Ms Steikunas's evidence about this issue. Ms Steikunas did introduce the Claimant to the Respondent's corporate style letter. Through Ms Suffolk-Heath, she had provided the Claimant with a template letter for requesting proofs, but we did not find that Ms Steikunas had told the Claimant to delete an initial, had told her that the way she was addressing a letter was not polite or had not allowed the Claimant to explain why she was doing this.

Harassment

124. We concluded that this allegation failed primarily because we did not find that Ms Steikunas conducted herself as the Claimant alleged she had done.

125. In terms of what we found Ms Steikunas had done, we found that this was not unwanted. The emails between the Claimant, Ms Steikunas and Ms Suffolk -Heath in those first two weeks were supportive. Ms Steikunas was not conducting herself with the purpose of violating the Claimant's dignity or creating a hostile, degrading or intimidating environment. Nor, in our view, did what Ms Steikunas did do have that effect. The Claimant had not proved facts from which we could conclude that what Ms Steikunas did do was related to race. The email chain showed that she was asked to provide a template letter by Ms Suffolk-Heath, and she did so. We concluded that she did what she would have done for any new starter.

Direct discrimination

126. We concluded that this allegation failed as a complaint of direct race discrimination again primarily because we had not found that Ms Steikunas treated the Claimant in the way the Claimant alleged.

127. In terms of what we found Ms Steikunas had done, we did not consider that LF was an appropriate actual comparator. LF was in a different role and Ms Steikunas did not play any part in supervision or training of LF. We did not find that Ms Steikunas had treated the Claimant any differently than she would have treated a white British agency new starter in comparable circumstances. The Claimant had not established facts from which we could conclude that what Ms Steikunas did do was because of race. We were satisfied that it was not. As we have already noted, the email chain (p196-7) showed that Ms Steikunas was asked to provide a template letter by Ms Suffolk-Heath, the emails were supportive, and we concluded that Ms Steikunas would have done the same for any new starter.

Conclusion on allegation 2

128. We therefore concluded that allegation 2 was not well founded whether as a complaint of direct race discrimination or harassment related to race.

Allegation 3: Throughout the Claimant's assignment, Ms Steikunas checked all the Claimant's work.

129. As discussed in our findings of fact section, we rejected the suggestion that Ms Steikunas checked all the Claimant's work.

Harassment

130. For completeness, we did consider whether to the extent that Ms Steikunas reviewed, or fed back on the Claimant's work on the days she was in the office (p417, p419), Ms Steikunas's conduct had been unwanted. We concluded that it was not. Further, where Ms Steikunas did review what the Claimant was doing this was not with the purpose of violating the Claimant's dignity or creating a hostile, degrading or intimidating environment and nor did it have that effect, considering all the circumstances and whether it was reasonable for the conduct to have that effect. The Claimant did not prove facts from which we could have concluded that anything Ms Steikunas did (in terms of reviewing or feeding back about work) on the days she was in the office related to the Claimant's race.

Direct Discrimination

131. We did not find that Ms Steikunas had treated the Claimant any less favourably than she treated, or would have treated someone who was white British whose circumstances were not materially different. For the reasons we have already explained in relation to allegation 2, we found that LF was not an appropriate comparator. The Claimant did not prove facts from which we could have concluded that anything that Ms Steikunas did (in terms of reviewing or feeding back about work) on the days she was in the office was because of race.

Conclusion

132. We therefore concluded that allegation 3 was not well founded whether as a complaint of harassment related to race or as a complaint of direct discrimination.

Allegation 4: In the second week of the Claimant's assignment Ms Suffolk-Heath told the Claimant that she should not call anyone back unless Ms Suffolk-Heath, Ms Steikunas or Mrs Josen were in the office to listen to the calls and make sure that the Claimant was asking the correct questions.

133. As explained in our findings of fact, we found that Ms Suffolk-Heath did not say this. It would not have made sense for her to say that because that was not what was happening. It is clear from the emails that we have already referred to that by the second week, the Claimant was being allowed to speak to customers, and that whilst she was being offered support she did not have someone listening in to every call or checking everything she did.

134. The claims of harassment related to race and direct discrimination because of race arising out of this allegation therefore fail. We did not accept that the Claimant had been subject to the alleged unwanted conduct, or had been treated as she alleged.

Allegation 5: One afternoon in the third week of the Claimant's assignment, Mrs Josen went into all the Claimant's work and emailed her asking her to correct it when it fact there were no errors.

135. We found that on 1 July (during the third week of the Claimant's assignment) Mrs Josen had reviewed the Claimant's diary notes, that she had emailed the Claimant asking her to correct a number of issues, and that one of the matters she had asked the Claimant to correct (not making reference to a child) had not been an error. We found that there had been other corrections raised by Mrs Josen that were things that needed to be changed in order to bring the Claimant's diary notes into line with the

Respondent's policies and ways of doing things. We found that the Respondent had a particular form of recording not only what discussion had taken place with a customer, but also things such as whether this was a new application and what actions needed to be taken, or needed to be taken next.

Harassment

136. We first considered whether Mrs Josen's conduct was unwanted. We concluded that it was unwanted by the Claimant.

137. We did not however find that Mrs Josen's conduct had the purpose of violating the Claimant's dignity, or creating or creating a hostile, degrading or intimidating environment. It may have been better to discuss these issues verbally, but Mrs Josen was, as she accepted, rushing. Everyone was very busy.

138. Nor did we conclude that Mrs Josen's conduct had the effect of creating a hostile, degrading or intimidating environment when considering the circumstances required by Section 26 (4) of the EA. We accepted that the Claimant was offended by Mrs Josen's actions, but we did not think that it had the effect set out in Section 26 when the circumstances of the case were considered. We did not consider it reasonable for the Claimant to feel that her dignity was violated, or that it created a hostile, degrading or intimidating environment. This was a busy office environment, the Claimant was new to this organisation, and this organisation, like many others, had its own way of doing things that it expected workers to adhere to. It is not unusual for people to give feedback by email in such an environment.

139. We further concluded that the Claimant had not proved facts from which we could conclude that Mrs Josen's conduct related to race.

140. We considered whether we could infer anything from the incident that had occurred earlier that day at lunchtime, and which we described in our findings of fact at paragraphs 63 to 65. We found we could not. The Claimant's own reason for not ordering lunch related to her religious belief rather than race. We had also found that Mrs Josen was not aware of why the Claimant had not ordered lunch.

141. The Claimant invited us to infer from the fact that Mrs Josen had criticised her at all, but particularly the fact she had wrongly criticised her, that Mrs Josen's actions related to race. We did not find we could make this inference. Unreasonableness alone would not be enough to infer that something was related to a protected characteristic. We accepted that Mrs Josen had herself made an error because she was rushing. Further, with the exception of one matter (the suggestion that the Claimant should have

made reference to a child), we had found that other issues raised by Mrs Josen could correctly be described as errors.

142. We did not consider that we could draw any inference from the fact that Mrs Josen was being prescriptive about how to write a diary note. This was not inherently related to race or to whether English was the Claimant's first language. Mrs Josen's feedback was not about how to write a sentence, but more the information that needed to be recorded and the order in which things had to be recorded to be in line with the Respondent's way of doing things.

Direct discrimination

143. We went on to consider allegation 5 as an allegation of direct race discrimination.

144. The Claimant relied upon LF as a comparator. Mrs Josen did not email comparable feedback to LF. We concluded that LF was not in comparable circumstances to the Claimant. Her job was different, and Mrs Josen had no involvement in training LF.

145. We found that the Claimant had not proved facts from which we could conclude that Mrs Josen acted as she did because of race, for the same reasons we have already explained in relation to the harassment claim. We accepted that Mrs Josen would have treated a white British agency worker who had also made what she regarded as errors in the diary notes in the same way.

Conclusion on allegation 6

146. We therefore concluded that allegation 5 was not well founded as an allegation of harassment related to race or direct discrimination because of race.

Allegation 6: In the third week of the Claimant's assignment Ms Suffolk-Heath told the Claimant she had to work from the office so people could watch her, when it had previously been agreed that she could work from home.

147. As we found in our findings of fact, Ms Suffolk-Heath did not say to the Claimant that the Claimant had to work from the office, because deciding where the Claimant was able to work was not her remit. Nor had it been previously agreed that the Claimant could work from home from the outset. We did find that Ms Suffolk-Heath told the Claimant that someone would be with her in the office during the following week (i.e. week 4) whilst she did her appointments.

148. For completeness, we did not find that Ms Suffolk-Heath telling the Claimant someone would be with her in the office during the following week had the purpose or effect of violating the Claimant's dignity. Nor had the Claimant proved facts from which we could have concluded that Ms Suffolk-Heath telling her that was related to race. We found it was not, it was to make sure someone was present to support the claimant as a new starter.

149. Ms Suffolk-Heath telling the Claimant that someone would be with her in the office during the following week was not less favourable treatment. LF was not in comparable circumstances. She did a different job and Ms Suffolk-Heath was not involved in training her. There were no facts from which we could have concluded that what Ms Suffolk-Heath did say to the Claimant was because of race. We found that Ms Suffolk-Heath would have acted in the same way for any new starter conducting their first appointments.

Allegation 7: on 8th July 2022, the Respondent terminated the Claimant's assignment.

150. The Respondent accepts that it did terminate the Claimant's assignment with effect from 8 July 2022. Niyaa, the agency that had placed the Claimant, was notified on the morning of 8 July 2022 (p121).

<u>Harassment</u>

151. We considered first whether the termination of the Claimant's assignment was harassment related to race.

152. We accepted that the termination of the assignment was unwanted conduct and that it upset the Claimant. The real issue was whether the termination was related to race.

153. We considered whether there were facts from which we could infer that the termination was related to race, and we found that there were not. In particular:

(a) The Claimant asked us to draw an inference from the other things that had happened to her, specifically, being told how to speak, being asked if she knew what to say, and the fact that her diary notes were checked to see if she was writing correctly. First, we had not found that those things had happened as the Claimant alleged. We have already addressed what we found happened, and why we concluded that there had not been earlier harassment related to race or discrimination because of race. Secondly, Ms Coates had not been involved in the other allegations that the Claimant complained of.

(b) We accepted that it was Ms Coates who took the decision to dismiss. That was consistent with the fact that it was Ms Coates who wrote to Niyaa on 8 July 2022.

(c) We considered whether we could infer anything from the fact that the termination had been communicated on a day that the Claimant had been celebrating Eid. We concluded that we could not. First, that celebration related to the Claimant's religion rather than race. Secondly, we had found that Ms Coates was in any event unaware that the Claimant had requested leave to celebrate Eid, or that she was celebrating Eid on 8 July 2022.

(d) We considered whether could draw an inference from the fact that when the Respondent notified Niyaa that it no longer required the Claimant, it did not provide the reason for that. We concluded that in the circumstances of this case we could not. Unreasonableness where there is other evidence to explain the behaviour is not something from which we could draw an inference of discrimination (Anya). In this case, the Respondent was notifying an agency that a worker was no longer required. We accepted the Respondent's evidence that where the assignment of an agency worker was brought to an end, they did not normally give a reason to the candidate.

154. In case we were wrong about whether the burden of proof had shifted, we addressed whether we were satisfied that the Respondent had proved to us that the termination of the assignment had nothing whatsoever to do with the Claimant's race, and we concluded that we were. As we had found, it was Ms Coates who had taken the decision to dismiss, and we accepted her evidence that the reason for that was cost. There was some concern about the cost of engaging the Claimant from the start of her assignment, and later Ms Coates had found that agency workers could be engaged at £25p/hr rather than £38 p/hr. That was a significant saving for the Respondent. This reason given by Ms Coates was consistent with the reason given to the Claimant once she wrote to the Respondent to complain about her treatment.

Direct discrimination

155. We considered whether the termination of the Claimant's assignment amounted to direct discrimination because of race.

156. The Claimant relied upon LF as a comparator. LF remained working for the Respondent. However, we did not find that LF was an appropriate comparator for the reasons we have already considered above.

157. We asked ourselves whether the Claimant had proved facts from which we could conclude that the termination was because of race. In the circumstances of this case, this involved the same considerations as the harassment claim, and for the reasons we have already explained we concluded that the Claimant had not proved such facts and so the burden of proof did not shift to the Respondent.

158. Further, for the reasons we have already explained in relation to the harassment claim, we concluded that the Respondent had satisfied us that the reason for the termination of the Claimant's assignment was nothing whatsoever to do with race. We concluded that a white British agency worker in the Claimant's position who had been costing the Respondent £38 p/hr would similarly have had her contract terminated.

Conclusion on allegation 7.

159. Allegation 7 therefore failed as an allegation of harassment related to race and direct discrimination because of race.

Time Limits

160. Notification for the purposes of ACAS early conciliation was on 5 October 2022 (day A) and a certificate was issued on 15 November (day B). The claim form was presented on 14 December, within one month of day B. Applying Section 123 and Section 140B of the EA, a claim about an act or omission that occurred prior to 6 July 2022 may be out of time. We needed to consider whether if there were any earlier acts or omissions they were part of a continuing act of harassment or discrimination continuing until at least 6 July 2022, or whether it was just and equitable to extend time.

161. The complaint relating to the termination of the assignment on 8 July 2022 was brought in time, but we found that it was not well founded. There could therefore be no continuing act of harassment or discrimination said to have continued to at least 6 July 2022. Further, the termination was by Ms Coates who was not involved in the earlier complaints.

162. The earlier allegations were therefore brought outside the primary time limit because they all occurred before 6 July 2022.

163. However, due to the short period of delay, the fact the Claimant was unwell during the week commencing 4 July 2022, and the fact that the Respondent was able to call evidence dealing with all of the allegations and was not prejudiced in dealing with the claims brought in the claim form, we were prepared to accept that it was just and equitable to hear the earlier complaints, so that we had jurisdiction. However, for the reasons we have

already explained, we found that the claims were not well founded and they were therefore dismissed on that basis.

Summary

164. For the reasons set out above, we concluded that none of the claims of harassment related to race, or discrimination because of race, were well-founded and we therefore dismissed them.

Employment Judge **C Knowles**

Date 18 January 2024