EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT		**RESPONDENT**
MS I NGULUWE	**V**	**BACSTAL PAC LLP**

HELD REMOTELY ON: 13, 14, 15, 16 & 17 MARCH 2023

BEFORE: EMPLOYMENT JUDGE S POVEY
MS Y NEVES
MR K LANNAMAN

REPRESENTATION:
FOR THE CLAIMANT: IN PERSON
FOR THE RESPONDENT: MR WHEATON (COUNSEL)

JUDGMENT having been sent to the parties on 22 March 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

1. At the conclusion of the hearing on 17 March 2023, the Tribunal gave judgment and oral reasons. On 30 March 2023, the Claimant requested those reason in writing. In error, that request was overlooked by the Tribunal. On 9 February 2024, the Claimant contacted the Tribunal again, asking about the 30 March 2023 request. It was at that point that the Tribunal's error in not actioning the Claimant's request of 30 March 2023 was discovered.

2. It follows that the request for written reasons was made in time. I apologise to the Claimant on behalf of the Tribunal for the delay in complying with her request.

Background

3. This is a claim by Isabel Nguluwe ('the Claimant') against her former employer, Bacstal Pac LLP ('the Respondent'). The Claimant was employed by the Respondent from 8 April 2019 until the termination of her employment with effect from 30 March 2020. She began early conciliation on the 22 June 2020 which ended on the 22 July 2020. On 21 August 2020, the Claimant presented her claim to the Employment Tribunal.

4. The Claimant brought complaints of direct race discrimination and harassment on the grounds of race, as defined by the Equality Act 2010 ('EqA 2010'). The Claimant is a black African woman. She also claimed that the Respondent failed to provide her with a written statement of her particulars of employment, contrary to section 1 of the Employment Rights Act 1996 ('the ERA 1996').

5. The Respondent is a limited liability partnership which provides payroll services to small businesses. It resisted the discrimination claims in their entirety. It denied that the allegations that were made took place or, if they did take place as alleged, that they were in no way motivated by or related to the Claimant's race. The Respondent also took issue with whether some of the allegations of discrimination had been brought within the time limit provided by the EqA 2010, namely within three months of the alleged acts occurring.

6. The Respondent conceded that it had failed to provide the Claimant with a written statement of her particulars of employment, in breach of its obligation under section 1 of the ERA 1996.

7. Following a period of case management, the parties agreed a list of issues (reproduced, so far as liability was concerned, in the Appendix). We were provided with a paginated, indexed bundle of documents ('the Bundle'). In addition, the Claimant helpfully provided a Scott Schedule, which set out in detail the allegations of discrimination that she pursued and that she made against various members of staff employed by the Respondent.

8. During the course of the hearing, which lasted five days and was conducted remotely video, we heard oral evidence from the Claimant and we heard oral evidence from the following witnesses on behalf of the Respondent, nearly all of whom had been the subject of allegations made by the Claimant:

    8.1. Sion Jones (Payroll Manager & the Claimant's line manager)
    8.2. Lis Daly (Partner)
    8.3. Dylan Morris (IT Manager)

8.4. Anne Hawley (Receptionist)
8.5. Rebecca Rice-Roberts (Partner)
8.6. Sian Williams (Partner)
8.7. Rhys Griffiths (Chartered Accountant)
8.8. Emlyn Griffiths (Partner)
8.9. Sera Griffith (Trainee Charted Accountant)
8.10. Yanek Piechota (Trainee Chartered Accountant)

9. Each witness we heard from provided and adopted their written statement as their evidence to the Tribunal. We also received written and oral submissions from Mr Wheaton for the Respondent and written and oral submissions from the Claimant.

The Law

Discrimination

10. Direct discrimination is defined by section 13(1) of the EqA 2010, and states as follows:

> (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.

11. Harassment is defined by section 26 of the EqA 2010 and, so far is relevant, states as follows:

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

12. The “relevant protected characteristics” include race (per section 26(5) EqA 2010).

13. The standard of proof is the balance of probabilities. The burden of proof in discrimination complaints has two stages, as follows (per section 136

of the EqA 2010, Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC and Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931, CA):

13.1. The Claimant has to prove facts from which the Tribunal could infer that discrimination has taken place;

13.2. If so, the burden 'shifts' to the Respondent to prove that the treatment in question was in no way because of a protected characteristic.

14. Section 123 of the EqA 2010 requires that proceedings under the EqA 2010 may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or such other period as the Tribunal thinks just and equitable. By reason of section 123(3), conduct done over a period of time is treated as being done at the end of the period, for the purpose of calculating the three-month time limit for bringing proceedings.

Written statement of particulars of employment

15. Prior to 6 April 2020, section 1 of the ERA 1996 stated:

> Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment

16. Where an employer fails to provide a written statement of particulars, the Tribunal must make an award equivalent to two weeks wages or, if it considers it just and equitable to do so, an award equivalent to four weeks wages (per section 38 of the Employment Act 2002).

17. However, no award under section 38 of the Employment Act 2002 can be made unless the Tribunal finds in the employee's favour in proceedings relating to a claim under any of the jurisdictions listed in Schedule 5 to the Employment Act 2002. That list includes a claim of discrimination under the EqA 2010.

Findings of fact

Introduction

18. The Claimant began her employment with the Respondent as an Admin/Payroll Assistant. Whilst the Claimant had a background in administration, she had no experience of payroll. However, the Respondent believed that she had the skills and aptitude to be trained up in payroll.

19. The Claimant's line manager in the payroll department was Sion Jones. It was not in dispute that within a few months of starting, the Claimant and Mr Jones' relationship deteriorated. The Claimant believed Mr Jones

to be condescending and unfairly critical of her work. Mr Jones felt that the Claimant was refusing to follow simple instructions.

20. Matters came to a head on 18 June 2019, when meetings were held separately with the Claimant and Mr Jones and then jointly with both of them present. The events of 18 June 2019 are considered in more detail below.

21. The Claimant's probationary period was extended by the Respondent on two occasions. Towards the end of the first extension (in October 2019), the Claimant's role was changed. She began working half of the time as an Accounts Assistant and the other half on Reception. The Respondent said that concerns arose about the Claimant's performance in her new roles, which, it said, were of a similar nature to those raised in Payroll (namely, of not listening to or following instructions).

22. The Covid pandemic hit in March 2020, followed by the roll out of the Government's furlough scheme. All but two of the Respondent's staff worked from home in the midst of the national lock down. Ann Hawley and Sara Williams were furloughed. The Respondent also took the decision, faced with a likely reduction in its workload and given its concerns about the Claimant's performance to date, to terminate her employment. The Claimant's employment ended on 31 March 2020.

23. The Claimant alleged that her treatment during her employment by various staff and managers of the Respondent constituted less favourable treatment and harassment by reason of her race. We considered those allegations below.

General Observations

24. We gave our reasons regarding the allegations of discrimination in line with the List of Issues and the Scott Schedule, as both were utilised by the parties in presenting their respective cases. However, we began with some general observations about the allegations made by the Claimant and the evidence we saw and heard.

25. Some of the allegations made by the Claimant were, in effect, her word against the word of one or more of the Respondent's witnesses. To help determine which account we preferred, the Tribunal had regard to the following factors.

26. There was a consistency of complaints and concerns about the Claimant's competency during her employment from different managers across different aspects of the Respondent's business. Given the breadth of those concerns, it was, in our view, more likely that these were genuine concerns, rather than a concerted and coordinated campaign of racial discrimination.

27. There was a failure on the part of the Claimant to raise any complaints of racial discrimination or racially motivated treatment throughout the entirety of her employment. Indeed, some of the events complained of now were never raised at all by the Claimant at the time. We reminded ourselves that this was a Claimant who did raise complaints about colleagues. In particular, as we returned to later in these reasons, the Claimant raised complaints about the conduct of her line manager, Sion Jones. She was afforded the opportunity, in the course of meetings in June 2019 with the partners of the Respondent and in a letter which she wrote herself, to raise allegations and concerns. Whilst she did make allegations about Mr Jones's conduct, she made no reference to any racial discrimination or any racial element to the alleged manner in which Mr Jones conducted himself.

28. On the Claimant's own evidence, she sought advice from Citizens Advice in the summer of 2019, at a time when, on her case, a number of the alleged incidents of racial discrimination were taking place. However, again on the Claimant's own case, she did not seek advice about her employment. Instead, she sought advice about her passport and naturalisation. In our view, there was no good reason why, if the Claimant believed that she was being subjected to discrimination, harassment and unfavourable treatment at work, that she would not have sought advice from Citizens' Advice either in the summer of 2019 or at some other time during the course of her employment. The fact that she did not suggested that any concerns she had about her treatment in work were not as present or as realised as they were to subsequently become.

29. The Tribunal reminded itself that the Respondent had chosen to employ the Claimant fully aware of her race and ethnicity. The Respondent had chosen to extend the Claimant's employment on two occasions, which we returned to in more detail, below. If, as alleged by the Claimant, the Respondent was treating her less favourably and harassing her because of her race, why would it employ her in the first place and why would it continue with and extend her employment on two separate occasions? It was not plausible, in our view, that numerous members of staff and management were hostile to the Claimant because of her race. That was inconsistent with how, in fact, the staff and management acted in recruiting and retaining the Claimant, until at least March 2020..

30. We also noted that there was evidence of the Respondent taking advice from an external human resources ('HR') body about decisions around the Claimant's employment, most notably the decision to dismiss her and the decision to refuse her request to be furloughed.

31. In respect of those allegations where it was the Claimant's word against another's, Tribunal took into account the above factors, which assisted us in reaching our conclusions.

32. Other complaints and allegations made by the Claimant had documentary evidence relating to them and the Tribunal was mindful that those documents were contemporaneous, whether in the form of emails, notes or letters. They had been created without any litigation or Tribunal proceedings in mind or being contemplated. Those factors allowed the Tribunal to place particular weight on the documentary evidence both as to what it contained and, just as importantly, what it did not contain.

The Claimant's Complaints

33. As detailed above, we structured our reasons on the Scott Schedule (at [41] – [56] of the Bundle) and the List of Issues (which we include as an Appendix to these reasons). There were 22 separate allegations of either direct race discrimination and/or harassment by reasons of race. As well as containing the Claimant's description of the alleged discrimination and harassment, the Scott Schedule included the dates when the alleged conduct took place, the people who allegedly undertook the conduct and the Respondent's response to each allegation.

34. We set them out, to a large extent, in the order they appeared in the Scott Schedule and have grouped and determined them according to whether they were allegations of direct discrimination, of harassment or, in one instance, an allegation of both direct discrimination and harassment.

The Allegations of Direct Discrimination

<u>Failure to Repair the Claimant's Computer</u>

35. We began with the allegation that the Respondent failed to repair the Claimant computer in a timely manner due to the colour of her skin (at [41] of the Bundle and Paragraph 2.2.4 of the List of Issues).

36. This related to the evidence of Dylan Morris, who was the Respondent's IT manager. He explained that there was an issue with the Claimant's computer, which required changing the hard drive. Whilst the hardware was being replaced, the Claimant had access to an alternative computer. We preferred the evidence of Mr Morris, as it was both clear and supported by documentary evidence. In our judgement, the Claimant misunderstood issues between the software package used by the Respondent (Autorec) and the hardware (the issue with her computer's hard drive). There was an issue with the software but that was unrelated

with the fault on the Claimants computer. The software problem was a user issue, related to the data, in the form of bank statements that were being scanned and then inputted. The hardware issue was resolved by Mr Morris without any undue delay (by way of a reinstallation procedure undertaken by Mr Morris).

37. In respect of the Autorec software problems, Mr Morris emailed the Claimant with suggestions for how to resolve the issue (at [145] – [146] of the Bundle). There was no evidence before us that the Claimant ever responded to that e-mail, saying that the problem had not been fixed or that the proposals had not resolved the issue.

38. Similarly, with the hardware reinstallation that Mr Morris undertook out of office hours, there was no evidence of the Claimant ever coming back to Mr Morris to say that it had not worked or not resolved the hardware problem.

39. For those reasons, we found that there was no delay in addressing the Claimant's IT issues, still less, any unfavourable or discriminatory treatment, racial or otherwise. The Claimant failed to prove facts from which we could infer discrimination.

Extensions of Probation

40. The second allegation of direct discrimination related to the extension of the Claimants probationary periods (at [42] of the Bundle and Paragraph 2.2.1 of the List of Issues). In our judgement, the Respondent could not have been clearer as to the reasons for why the Claimant's probationary periods were extended. We began by reminding ourselves that the offer of employment made to, and accepted by, the Claimant was clear that it was subject to the successful completion of a three month probationary period and that during the probationary period, either party could terminate the contract with one week's notice (at [81] of the Bundle).

41. The Respondent was quite entitled to conclude that the probationary period had not been successfully completed. The first time that happened was because the Respondent did not feel able to fairly assess the Claimant because of the issues she had had with Sion Jones (considered in more detail, below). In a letter of 24 June 2019 (at [122] of the Bundle), the Respondent confirmed an earlier discussion with the Claimant (on 18 June 2019) that her probationary period was to be extended because "*due to the dispute arising between yourself and [Mr Jones], we consider that it has not been possible to properly assess your competence for the role during your original probationary period."*

42. That decision was, in one sense, beneficial to the Claimant. The Respondent could have simply ended her employment at that stage with one week's notice. The Respondent did not do that. The Respondent

wanted to give the Claimant more time in order to fairly assess her competence.

43. The Claimant's probationary period was extended again from October 2019. The reason for that extension were similarly clear, as was the evidence of the various witnesses that we heard from. The reasoning for the second extension was that the Claimant had recently moved from the payroll department to undertake a role which was split between reception and accounts (per the letter of 8 November 2019 at [140] of the Bundle).

44. The reasons for extending the Claimant's probationary periods were logical, reasonable and clear. In our judgement, it was fanciful to suggest that the probation period had been extended because of the Claimant's race.

45. In addition, the Claimant raised no complaints at the time of each extension. If she truly believed that the decisions were racially motivated, why did she not raise it with anybody, either inside or outside of the Respondent' organisation? The Tribunal concluded that the Claimant did not complain (and nor did she resign) because she did not believe at the time that those decisions were racially motivated.

46. All of this was against the background of an offer of employment that included a right to terminate with one week's notice, which the Respondent did not trigger. There had been issues in payroll between the Claimant and Mr Jones, so the Respondent switched the Claimant from one department to another. The Respondent did not have to do that. It did so to benefit the Claimant and, on any analysis, the decisions to extend the Claimant's probationary period could not be considered as less favourable treatment and were in no way informed by the Claimant's race. The Claimant again failed to prove facts from which we could infer discrimination.

The Claimant's Training

47. The third allegation related to Sion Jones' apparent unwillingness to train the Claimant when she was in the payroll department (at [42] – 43] of the Bundle and Paragraph 2.2.3 of the List of Issues).

48. As noted above, it was not in dispute that the Claimant had never worked in payroll prior to joining the Respondent. Mr Jones' evidence was that he did train the Claimant but was too busy to train her fully. That evidence was supported by the decision of the Respondent to enrol the Claimant on a course (at [87] of the Bundle).

49. The fact that Mr. Jones had also provided some initial training was supported by the Claimant's clear ability from early on in her employment to do some payroll tasks, which contrasted to her abilities at the start of her employment.

50. However, Mr Jones' evidence was also that the Claimant would move on to a task without properly completing the previous one. The Claimant had alleged that Mr. Jones said that she was too fast. Mr Jones' opinion that the Claimant would move on to another task before properly completing the previous one was, in our judgment, an opinion which, as her line manager with experience in payroll (both specifically with the Respondent and more generally in his career), he was quite entitled to hold. To the extent that it was a criticism of the Claimant, it was a criticism which was open to Mr. Jones, given his role as the Claimant's line manager in an area in which she had never previously work.

51. Importantly, there was no evidence or any findings of fact from which we could infer that such criticism was racially motivated or that any failure by Mr. Jones to fully train the Claimant was in any way racially motivated.

Direct Requests to the Claimant

52. The next allegation of direct discrimination related to a general point about Mr Jones' reaction if staff or customers asked the Claimant directly to do anything, with a specific example relating to a P60 request from accounts manager Rhys Griffiths (at [43] of the Bundle and Paragraphs 2.2.2 & 2.2.5 of the List of Issues).

53. On 10 May 2019, Mr Griffiths sent an e-mail to the Claimant (at [84] of the Bundle). It asked the Claimant to print off a copy of a P60 for a client. The Claimant's evidence was that she needed Mr. Jones to do it for her because she didn't know how but that he didn't have the time and he became angry. Mr. Jones denied getting angry with the Claimant. Rather, his evidence was that, as the Claimant was new, he simply requested that all requests for work came through him and were not sent directly to her.

54. In our judgment, there was nothing unreasonable in that. It was plausible that Mr Jones would want to monitor the Claimant's work. Contrary to the Claimant's evidence (at Paragraph 105 of her witness statement), the e-mail from Mr Griffiths did not ask her to create the P60. It asked her to print off a copy. There was, in our judgement, nothing unreasonable in Mr Jones' attitude or Mr Griffiths' request. There was no less favourable treatment, still less any facts upon which we could infer that the Claimant's treatment was because of her race.

18 June 2019

55. The next allegations related to the events of 18 June 2019 (at [42] – [44] of the Bundle and Paragraphs 2.2.2 & 2.2.5 of the List of Issues).

56. They began with an allegation that the Claimant had run out of her office crying and had gone to Liz Daley's office. She claimed to feel intimidated and scared by Mr. Jones in the course of a confrontation which had taken place in the office that the Claimant shared with Mr. Jones and Mr Morris. There was specifically a reference to how accounts' paperwork was to be marked when tasks had been completed. This was the issue about whether to use a pen or a highlighter.

57. The Claimant was using a highlighter when Mr Jones had given a clear, credible and reasonable explanation for why he wanted her to use a pen to strike through tasks. The Claimant did not agree with Mr Jones' direction and refused to follow his instruction. Indeed, that disagreement came through in the Claimant's own cross examination of Mr. Jones, where she took time to ask him whether or not he agreed that her use of a marker pen/highlighter did not cause confusion.

58. In her evidence to the Tribunal, the Claimant claimed that she used a highlighter (as opposed to a pen) to protect herself from further criticism by Mr. Jones. There was, in our judgement, some force in Mr Wheaton's submission that, in this regard, the Claimant was somewhat trying to backtrack from the position previously stated, wherein she believed that Mr Jones was wrong and her system (of using a marker pen) was preferable The Claimant now appeared to be suggesting that she used a marker pen to ensure Mr Jones knew what work she had done.

59. In the Tribunal's view, the Claimant's arguments missed the point, which was that she was given a reasonable instruction by her line manager and consistently refused to follow it. That was the plausible and persuasive explanation for why Mr. Jones, by his own admission, became frustrated with the Claimant. It was supported by the evidence of the meeting on 18 June 2019, in which Mr. Jones accepted that he lost his temper and walked out (and considered further, below). That was reasonably explained, in our judgement, by the Claimant's continued refusal to follow a simple instruction on how to do her job.

60. There was no evidence from which the Tribunal could infer that Mr Jones' instructions about how to mark tasks as completed were related to the Claimant's race. Mr Jones and the Claimant clashed over how Mr. Jones wanted the job doing. But that clash, those disagreements and Mr Jones' behaviour and conduct thereafter was because of the Claimant's attitude and approach to her work, not her race.

61. On 18 June 2019, as alluded to, a meeting subsequently took place between Liz Daly, David Williams, Mr. Jones and the Claimant (at [45] – [46] of the Bundle and Paragraphs 2.2.4 & 2.2.5 of the List of Issues). In

the Scott Schedule, the Claimant set out a number of allegations regarding Mr Jones' conduct. Mr. Jones, as already mentioned, accepted that he got angry in that meeting and walked out. Ms Daly's evidence was that both the Claimant and Mr. Jones were raising their voices and that she asked both of them to stop doing so and to be quiet.

62. The Tribunal could find no reason not to accept Ms Daly's recollection. It was reflective of the atmosphere and disagreements between Mr. Jones and the Claimant. The Tribunal did not doubt that the Claimant found the meeting difficult and upsetting. Mr. Jones himself also found the meeting difficult and upsetting. However, in our judgement, there was clearly a clash of personalities and a disagreement about how the Claimant should be undertaking the tasks which made up her job in payroll. However, we were unable to infer, still less conclude, that any of that had anything to do with the Claimant's race.

63. The Claimant made two further specific allegations, one of which we have, in effect, dealt with, namely the manner in which she marked her work. In addition, she attributed comments to Mr. Jones to her along the lines of "*Mrs Perfect. how can you miss that?"* in respect of an alleged error in her work. Mr Jones denied ever saying such a thing to the Claimant.

64. As we explained above, it was open to Mr. Jones to raise the issues with the way that the Claimant's work had been completed. That was reasonable and consistent with his legitimate concerns over the Claimants inability to follow simple instruction.

65. As for the alleged "*Mrs Perfect"* comment, this was another incidence of the word of the Claimant against the word of Mr. Jones. There was no other evidence regarding the allegation.

66. The Tribunal had regard once more to the factors which we alluded to in our General Observations, above. In particular, there was a failure by the Claimant to complain in any way whatsoever about this alleged comment. She had complained about Mr. Jones on both 14 June 2019 (when she had a meeting with the partners in the absence of Mr. Jones) and on 18 June 2019 (when she had the meeting in the presence of Mr. Jones). She had spoken to Citizens Advice in the summer of 2019 but not about her employment.

67. The failure to raise any complaint or ever refer to the alleged remark at the time that she purported it was made indicated, in our view, that the comment was either not made or the Claimant did not consider it to be objectionable. It was noteworthy that on the Claimant's case this allegation took place less than 12 days after the meeting where she had raised complaints about Mr. Jones, and yet she raised no complaints about these alleged remarks. It was not consistent or plausible that, had the remark been made, the Claimant would have failed to raise it with or report it to others.

68. On balance, given that the Claimant had raised complaints about Mr Jones' behaviour towards her at the time, her failure to make any mention of the "*Mrs Perfect"* comment led us to conclude Mr Jones did not refer to the Claimant in that way. It follows that there was, in that regard, no less favourable treatment.

Taking Anne's Job

69. The next allegation concerned Yannick Piechota (at [46] of the Bundle and Paragraphs 2.2.2 & 2.2.5 of the List of Issues).

70. This related to when the Claimant was performing tasks in Reception. Anne Hawley was another of the Respondent's receptionists. The Claimant alleged that Mr Piechota, upon seeing the Claimant undertaking receptionist tasks said "*Is it Anna's job you want to take now?*"

71. Mr Piechota's evidence was that, at most, he would have said "*Are you Anne today?"*, in a reference to Ms Hawley (who was a longtime employee).

72. The other person referred to in the narrative of the allegation that appears in the Scott Schedule (R. Claybrook) had, we were told, left the Respondent's employment and was not called by either party to give evidence.

73. Again, this was one word against another. There was no other corroborative evidence about what was said. We were mindful again of the General Observations made earlier in these Reasons. The Claimant did not raise any concerns or complaints at the time with the Respondent about this alleged comment. The Claimant did not go back to Citizens' Advice at this time to get advice on her employment rights.

74. There was also no other evidence that anyone was concerned that the Claimant was "*taking their jobs*". It did not make sense anyway, because all of the other employees already had jobs. The Claimant did not complain about the comment at the time, nor did she report that it was in any way racist. At its highest, it appeared that the Claimant misremembered what was said.

75. For those reasons, we preferred Mr Piehota's recollection.

76. In the alternative, even if Mr Piechota had said "*Is it Anna's job you want to take now?*, we were unable to infer, having regard to all the facts, that such a comment was motivated by or had anything to do with the Claimant's race.

Request to Go to the Bank

77. Next, the Claimant complained that Sera Griffiths, who was one of her line managers when she worked in the accounts department, asked the

Claimant to go to the bank rather than doing it herself (at [46] – [47] of the Bundle and Paragraph 2.2.5 of the List of Issues). It was not in dispute that Ms Griffiths did ask the Claimant to go to the bank.

78. However, in our judgment, it was a reasonable instruction by a trainee accountant (as Ms Griffiths was at the time) to her assistant (namely, the Claimant) The Tribunal was unable to understand how the request was unfavourable treatment. In reality, it was not.

79. In addition, it was simply not possible from those facts to infer that Ms Griffiths asked the Claimant to go to the bank because of her race. Ms Griffiths was a trainee accountant, employed by a company engaged in payroll services. It was wholly plausible that visits would be required to the bank in the course of the Respondent's business. That was what was asked of the Claimant by her line manager. It was a reasonable and wholly understandable request. It was not less favourable treatment and was not in any way associated with the Claimant's race

Cleaning the Window

80. The Claimant also alleged that Ms Griffiths asked her to clean a dirty window (at [47] of the Bundle and Paragraph 2.2.5 of the List of Issues). This was an allegation that caused the Claimant to become upset when recalling it in her oral evidence.

81. The allegation was denied by Ms Griffiths. Her recollection was of the Claimant choosing to clean the window of her own volition, rather than being asked to do so..

82. In deciding which recollection to prefer, the Tribunal was mindful of the following:

    82.1. The Claimant had felt able to raise complaints at the time about her treatment by Mr. Jones.

    82.2. There was evidence of the Claimant not following instructions from her line managers to undertake simple tasks.

    82.3. In contrast, the Claimant claimed that she was told to do a demeaning task by Ms Griffiths, which still caused a level of upset when she was asked to recall it three years later. Yet, the Claimant did not suggest that she refused Ms Griffiths' instruction, despite the fact that the Claimant had refused to undertake other tasks asked of her. Nor did the Claimant suggest that she complained at the time about Ms Griffiths' requiring her to clean a window, despite having felt able to raise complaints against Mr Jones.

83. In our judgement, the Claimant's recollection of being told to clean a window was neither plausible nor credible. When considered in the context of the evidence as a whole, it was not plausible or credible that the Claimant would have agreed to perform the task or, if she had, that

she would not have complained about it thereafter to somebody else within the Respondent organisation.

84. We therefore preferred Ms Williams' recollection. It followed that the allegation that the Claimant was told to clean a window was not made out. As there was no treatment, less favourable or otherwise, there could be no inference of discrimination.

Dismissal and Refusal to Furlough

85. Although not in the Scott Schedule, the Claimant alleged that the decision to dismiss her without warning, consultation or following the disciplinary policy was an act of direct race discrimination (at Paragraph 2.2.7 of the List of Issues).

86. On 8 November 2019, the Claimant's probationary period was extended to 31 March 2020 (at [140] of the Bundle and as referred to, above). In February and March 2020, the Covid pandemic was starting to impact the UK (with the first national lockdown announced on 23 March 2020).

87. On 4 March 2020, Lis Daly reported the outcome of a partners' meeting as follows (at [153] of the Bundle):

> The consensus at the meeting was that [the Claimant] is unfortunately unsuitable. This is based on feedback from Sera [Griffiths] regarding the accounting side of things, and from Sian [Williams] regarding reception (both of which have made observations that echo certain comments that Sion [Jones] made initially).
>
> The suggestion was that we inform Isabel on Friday afternoon, but she is still allowed to stay until 31st March being the end of the probationary period (assuming that she wants to)…

88. There was a consistency between the reasons given for not retaining the Claimant and the concerns raised by various managers about her work. In her written evidence, Ms Daly explained that, as a result of the pandemic escalating, the Respondent was unable to meet with the Claimant as proposed (Ms Daly referring to being "*overtaken by events"* at Paragraph 27 of her witness statement). Indeed, on 23 March 2020, the Respondent informed all its staff to stay at home, in line with the national lockdown announced that evening (at [168] of the Bundle).

89. After taking HR advice (at [171] – [172] of the Bundle), Ms Daly wrote to the Claimant on 26 March 2020, informing her that her employment would end when her probationary period ended on 31 March 2020 (at [173] of the Bundle). The reason given for the termination of the Claimant's employment was as follows:

> Due to the exceptional situation that we currently find ourselves in as a business, as caused by the Coronavirus outbreak, we are unfortunately unable to offer you a permanent position with the business. Your employment with [the Respondent] will therefore end on 31 March 2020.

90. As explained by Ms Daly in her written evidence (at Paragraph 29 of her witness statement), the decision was taken not to refer to the Respondent's concerns about the Claimant's performance "*out of concern for [the Claimant's] feelings."* In hindsight, Ms Daly accepted that "*it would have been better had I telephoned Isabel to explain that she was going to receive the letter and discuss it with her*" and expressed regret at not handling the matter better.

91. Having regard to the totality of the evidence, there was nothing from which the Tribunal could infer that the real reason for the decision not to extend the Claimant's employment was her race. The reasons given were consistent both with the history of the Claimant's employment and the unprecedented circumstances which arose from March 2020. In our judgment, the reasons disclosed for the decision to terminate the Claimant's employment were the actual and genuine reasons. The Claimant's dismissal was not in any way related to her race.

92. Next, the Claimant alleged that the refusal by the Respondent to furlough her was due to her race and an act of direct discrimination (at [48] – [49] of the Bundle and Paragraph 2.2.6 of the List of Issues). It was not in dispute that on 20 April 2020, the Claimant asked the Respondent to furlough her (at [185] of the Bundle) and that on 22 April 2020, the Respondent informed the Claimant that it would not be placing her on furlough (at [187] of the Bundle).

93. There was also documentary evidence that when the Claimant's request was made, the Respondent took external HR advice (on 20 and 21 April 2020, at [175] – [184] of the Bundle). This all took place within a few weeks of the furlough scheme being introduced.

94. By that time, the Respondent had already decided to end the Claimant's employment and communicated the same to her (by the letter of 26 March 2020, at [173] of the Bundle).

95. The Respondent was advised that to furlough the Claimant after her employment had been terminated would be at odds with that decision and could arguably have been an inappropriate use of the furlough scheme. That was why the Respondent did not furlough the Claimant. She was, by that time, no longer employed by the Respondent.

96. On that basis, whilst the Claimant disagreed with the Respondent's decision, there was nothing in the evidence from which we could infer that the decision not to furlough the Claimant was because of her race. In simple terms, she was not eligible for the furlough scheme because her employment had ended.

The Allegation of Direct Discrimination & Harassment

Post-Dismissal Contact

97. The next allegation concerned a purported telephone conversation between Emlyn Griffiths and the Claimant's partner (at [47] – [48] of the Bundle). It was alleged that this occurred on 29 March 2020, following the Claimant's dismissal. It was alleged that the Claimant's partner contacted Mr Griffiths, who was a friend of his, and in the course of the conversation, Mr Griffiths suggested that the Claimant's treatment by the Respondent may have had something to do with the colour of her skin.

98. This was the one allegation which the Claimant submitted was an act of both direct race discrimination and harassment by reason of race.

99. There was no evidence before us from the Claimant's partner. There was an application by the Claimant to depose him very late in the proceedings, namely at the start of day four of the five day hearing. The Tribunal refused that application upon concluding that the balance of prejudice fell in favour of the Respondent, given the lateness of the application and the fact that the Claimant could raise the issues directly with Mr Griffiths (from whom we did hear evidence) and the Claimant herself had given evidence on what her partner had told her Mr Griffiths had said (as such, the comments attributed to Mr Griffiths were before us in evidence).

100. Mr Griffiths said that he could not recall the telephone call specifically but he was clear in his evidence that he would have made no reference whatsoever to the Claimant's race or to her skin. There was no other evidence before the Tribunal directly on this point (as the Claimant's evidence was second hand, in that she was reporting what her partner had told her Mr Griffiths had said, rather than hearing it directly herself).

101. For those reasons, the Tribunal were unable to find on the evidence before us that, on balance, Mr Griffiths had suggested to the Claimant's partner that her treatment by the Respondent had been because of her race. As we were unable to find that this allegations was made out, there was no less favourable treatment or unwanted conduct from which were could infer discrimination or harassment.

The Allegations of Harassment

Use of Welsh

102. The Claimant alleged that Sion Jones and Dylan Morris caused tension in the office that she shared with them by the way that they treated her. Specifically, it was alleged that they would complain that she was too quiet, they would swap from speaking in English to Welsh when the Claimant entered the office and Mr Morris would stand up from his desk angrily and exit the room for no reason (at [50] of the Bundle). The

Claimant relied upon these allegations as acts of harassment on the grounds of race (per Paragraph 3.1.1 & 3.1.4 of the List of Issues).

103. It was not in dispute that there was an atmosphere in the office which the Claimant shared with Mr Jones and Mr Morris. As detailed above, we found that that was as a result of a clash of personalities between Mr. Jones and the Claimant, which arose from the Claimant's refusal to follow instructions given to her by Mr. Jones. That refusal caused frustration and antagonised Mr. Jones. He accepted that he became frustrated with the Claimant's repeated failure to carry out tasks in the manner asked of her.

104. Both Mr. Jones and Mr Morris' evidence was that they would speak in Welsh to each other, as it was their first language. However, they would revert to English when speaking to the Claimant (who was not a Welsh speaker).

105. Mr Morris' evidence was that if he did get up and leave quickly, it was because, as IT manager, he was reacting to requests for IT assistance from other employees. Some of those requests were urgent. If that caused him to leave the office hurriedly, it was not in any way because of the Claimant.

106. The Tribunal preferred the evidence of Mr Jones and Mr Morris. It was clear, plausible and consistent. As such, we were unable to find that these allegations were made out or, if they were, we were unable to infer from them that they related to the Claimant's race.

<u>Foreigners & Tourists</u>

107. The next two allegations in the Scott Schedule were considered together. The Claimant said that both occurred in the summer of 2019, as follows (at [50] – [51] of the Bundle and Paragraphs 3.1.2 & 3.1.3 of the List of Issues):

    107.1. Upon returning from a holiday in Scotland, Mr. Jones talked about Scotland being full of "*bloody foreigners",* made a derogatory noise and said he couldn't bear it.

    107.2. Both Mr. Jones and Mr Morris would make reference to "*bloody foreigners"* and Mr Morris talked about the "*Third World War* "in respect of tourists visiting the Pwllheli area.

108. Both Mr. Jones and Mr Morris denied that they referred to "*bloody foreigners"* but accepted independently of each other that they may have said "*bloody tourists"* in respect of the local area. Pwllheli is a seaside resort which would have seen an influx tourists and visitors in the summer months (including in the summer of 2019). Those people visiting Pwllheli would be considered as tourists. Indeed, the Tribunal took the view that it was a common refrain from those who lived and worked in

seaside towns during the high season, as to the inconveniences caused by an influx of large numbers of tourists.

109. In our judgment, it was more consistent and plausible that Mr Jones and Mr Morris would have referred to "*tourists",* as opposed to "*foreigners*", in Pwllheli. Mr Jones' evidence was that he did comment on the number of foreign visitors on a trip to Edinburgh. At most, it appeared that the Claimant has mistakenly conflated these two incidents which led her to erroneously recall Mr. Jones and Mr Morris referring to "*bloody foreigners"*.

110. The Claimant tried to suggest that, in any event, she would be considered a tourist in Pwllheli. That argument, in our view, was not sustainable. The Claimant worked in Pwllheli. On no reasonable basis could she have thought that a reference to "*bloody tourists"* included her. There was no unwanted conduct and there was no conduct that was related to the Claimant's race.

111. Similarly, Mr Morris denied making any reference to the "*Third World War."* This was, in effect, Mr Morris' word against the Claimant's. Even if Mr Morris did likened Pwllheli during the summer season to the "*Third World War"*, it was unclear how that was either unwanted conduct in respect to the Claimant (who herself was not a tourist in Pwllheli) or how it related to the Claimant's race.

112. For those reasons, we were unable to find that there was any unwanted conduct and, if there was, the evidence did not permit the inference that such conduct was because of the Claimant's race.

<u>The Claimant's Job and the Welsh Girl</u>

113. The Claimant alleged that Mr Jones, Mr Morris and a few other unnamed employees of the Respondent would say that her job should have been given to a Welsh white girl and not someone like the Claimant (at [52] of the Bundle and Paragraph 3.1.5 of the List of Issues). This was denied by Mr. Jones and Mr Morris.

114. The Claimant's evidence changed during the course of her oral evidence from it being a Welsh white girl to a Welsh person. The change in the Claimant's evidence undermined the reliability of her recollection.

115. Further, and as with other issues that have been discussed already, no complaint about this was ever raised by the Claimant at the time, despite the fact that one of those against whom the allegation was made was Mr. Jones, about whom the Claimant had already complained.

116. For those reasons, we found the Claimant was mistaken in her recollection and the incident complained of did not happen. It followed that there was no unwanted conduct, as claimed.

The Reaction to Mistakes

117. The Claimant alleged that Mr Jones and Mr Morris wanted to know when she had made a mistake so that they could harass and laugh at her (at [52] – [53] of the Bundle and Paragraph 3.1.6 of the List of Issues). On the Claimant's case, this occurred between October 2019 and March 2020, after she had ceased working or sharing an office with Mr. Jones and Mr Morris (since she had moved to her split role in accounts and reception in the summer of 2019).

118. Save for the Claimant's bare assertions, there was no other evidence to support the allegation. It was denied by Mr. Jones and Mr Morris. There was no complaint by the Claimant at the time, even though once again the allegation included a complaint involving Mr. Jones, against whom the Claimant had already complained in the past.

119. For those reasons, the Tribunal was unable to find that the allegation was proven on the balance of probabilities. As such, we found that what was alleged did not happen and, by extension, there was no unwanted conduct

Funny Looks

120. The Claimant made a specific allegation of harassment by reason of race against Ann Hawley, the reception manager (at [53] – [54] of the Bundle and Paragraph 3.1.7 of the List of Issues). She claimed that Ms Hawley would stand behind her looking at her hair and giving her funny looks. It was alleged that this course of conduct had taken place between November 2019 and March 2020.

121. Again, save for the assertions by the Claimant, there was no other evidence to support these allegations. The allegations were denied by Ms Hawley. It was another example of one word against another.

122. The Claimant raised no complaint at the time, despite alleging that the conduct was sustained over a period of months.

123. For those reasons, we again found that complaints were not made out, did not, on balance, happen and, as such, there was no unwanted conduct.

Telephone Message

124. The Claimant alleged that Mr Jones humiliated her when he emailed her about a telephone message from a client (at [54] of the Bundle). This related to a telephone message that the Claimant passed to Mr Jones when she was working on reception. In his evidence, Mr Jones accepted that there was a conversation with the Claimant about the name of the person within the client's business that he was required to ring back.

125. At this point, the Tribunal observed that this was another example of Mr Jones making concessions of his own volition (as he had done in accepting he had become frustrated by her failure to follow his instructions). Those concessions enhanced Mr Jones' credibility as a witness.

126. The Claimant's recollection in respect to this particular allegation was vague as to the date it took place (she placed it somewhere between 2 February and 20 March 2020). She did not complain about her treatment at the time, despite having previously complained about Mr. Jones. As such, we preferred Mr Jones' recollection that he had simply checked with the Claimant as to the name of the client contact he had to ring back and did so in a manner that was neither unwanted nor humiliating.

127. As such, the allegation of unwanted treatment was not made out.

The Scanner

128. The Claimant alleged that Mr. Jones would ask her to move from the scanner in the corridor but that he would not do that with anyone else (at [54] – [55] of the Bundle and Paragraph 3.1.8 of the List of Issues).

129. Again, there was no evidence that the Claimant raised this with her managers or with her colleagues at the time, despite it again relating to Mr. Jones, against whom she had had no compulsion over raising complaints in June 2019.

130. In addition, there was evidence of a plausible explanation for why staff using this scanner would be required to pause scanning. It was to allow printing to take place through the same machine. It was conceivable that the Claimant would have been asked to move away from the scanner for that purpose.

131. However, we were unable to find on the evidence before us that the Claimant was targeted or that being asked to move whilst printing was undertaken was unwanted conduct. Even if it was, there was no evidence from which the Tribunal could have reasonably inferred that such a request was because of the Claimant's race.

Welsh Welsh

132. There was another allegation relating to Ms Hawley, from which the phrase '*Welsh Welsh'* derived (at [55] – [56] of the Bundle and Paragraph 3.1.8 of the List of Issues). The allegation was that Ms Hawley had told the Claimant that a shop owner in the locality was very "*Welsh Welsh"*, which meant that he would support other Welsh people and be there for each other (according to the Claimant's allegation).

133. The Claimant further alleged that she was left "*speechless and disgusted*". Ms Hawley denied saying this or even knowing what '*Welsh*

Welsh' meant. There was also disagreement between the Claimant and Ms Hawley over which shop the alleged comment was directed at.

134. There was no other evidence of the conversation. No complaint was made by the Claimant at the time, despite her claim that it left her "*speechless and disgusted*." In any event, even taken at its highest, it was a comment about a shop owner. It was not a comment about the Claimant or a comment about any of the Respondent's staff.

135. As such, the Tribunal concluded that the Claimant's recollection was mistaken and there was no unwanted conduct. In the alternative, and on the Claimant's own case, the comment was about someone else unconnected with the Respondent's business that was not directed at the Claimant, was not unwanted conduct, and could not, objectively assessed, have caused the Claimant the levels of distress alleged or required to make out a complaint of harassment (namely, violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant).

The Office Move

136. The final allegation in the Scott schedule related to a request by Rebecca Williams, the accounts manager, for the Claimant to move to a different office (at [56] of the Bundle). The allegation was that the Claimant was not provided with a desk in which to put her belongings. Rather, she was given shelf space. That was not materially challenged by the Respondent. We found, therefore, that the allegation was made out, namely that when the Claimant moved between offices in March 2020, she was not provided with desk space for her belongings, but rather some shelf space.

137. Even if we accepted that this was unwanted conduct (in that the Claimant wanted desk space for her belongings), there was no evidence that could reasonable permit an inference that the reason for that was because of the Claimant's race.

138. In addition, being provided with shelf space as oppose to desk space could not have objectively demeaned the Claimant or created a hostile, degrading, intimidating or offensive environment. In other words, it was not an act of harassment, still less was an act of harassment that related to the Claimant's race.

The Perfume

139. There was one other allegation which was not in the Scott Schedule or the List of Issues but was referred to in the Claimant's witness statement and was put as a specific allegation to Sera Griffiths. As it was explored in evidence, the Tribunal believed it only right to consider and determine it.

140. The Claimant alleged that she offered a roll on perfume to Ms Griffiths, who refused it after being told by the Claimant that she had already used it herself. The Claimant said that Ms Griffiths refusal was because of the Claimant's race and skin colour.

141. Ms Griffiths denied the allegation, which she said was simply not true. Rather, she recalled that the Claimant had asked her to smell a number of roll on perfumes and say which one she preferred. Only after indicating a preference did the Claimant offer it to her as a gift. Ms Griffiths declined the gift because previous roll on deodorants had irritated her skin. It has nothing to do with the Claimant's prior use of it or her race or skin colour.

142. Again, the Claimant did not at the time raise any complaint with a partner, manager or any other colleague of the Respondent. Ms Griffiths provided a plausible explanation for why she declined the gift. There was no other evidence to support the allegation that the Claimant's race had played any part in her decision. It was supposition and assumption by the Claimant.

143. For those reasons, we preferred Ms Griffiths' recollection. It followed that there was nothing from which the Tribunal could infer that the refusal of the roll on perfume was because of the Claimant's race. There was no unwanted conduct or less favourable treatment and whether alleged as an act of direct discrimination or harassment, the complaint was not made out.

Discrimination Complaints: Conclusions

144. For all of those reasons, the complaints of direct race discrimination were not made out, because either the unfavourable treatment complained of was not proven and did not occur or there was insufficient evidence to infer that any conduct by the Respondent towards the Claimant was because of her race.

145. The complaints of harassment by reason of race were similarly not made out, because the allegations of unwanted conduct were not made out or the threshold for harassment was not objectively proven. In addition, there was insufficient evidence to infer that any conduct by the Respondent towards the Claimant was because of her race.

Written Particulars

146. As already noted, the Respondent conceded that it failed in its duty to provide the Claimant with a written statement of her particulars of employment (per section 1 of the ERA 1996).

147. However, we have not found in the Claimant's favour on any of her complaints under the EqA 2010. By reason of section 38 of the Employment Act 2002, there can be no award of compensation for the failure to provide written particulars. Indeed, that requirement was

flagged up by Employment Judge Sharp in her case management order of 16 April 2021 (Paragraph 47, at [66] of the Bundle).

148. As no other complaints have succeeded in this case, by law, there can be no award of compensation.

Time Limits

149. The final issue we addressed was one of time limits. This was, in effect, an academic exercise because none of the complaints of discrimination succeeded. However, it was an issue that was raised before us and we heard submissions on it. It also went to our jurisdiction and therefore we considered and determined it.

150. As indicated in the List of Issues (at Paragraph 1.1), because of the dates of ACAS Early Conciliation and the date when the claim was presented to the Tribunal, any allegation relied upon by the Claimant that predated 27 December 2019 had been presented out of time.

151. The Tribunal had the power, by reason of section 123 of the EqA 2010 to in effect extend time where it was just and equitable to do so. That required the Tribunal to consider the respective position of both parties and the relative prejudice of either extending time or refusing to extend time.

152. The Claimant acted without legal representation. She was as a litigant in person throughout these proceedings She was not a lawyer, a factor that weighed in her favour when considering whether to extend time.

153. However, there were a number of difficulties faced by the Claimant in that regard. First of all, on her own case, she went to Citizens' Advice in the summer of 2019. She did not take employment advice on that occasion but failed to provide any explanation for why she did not return to Citizens' Advice at any point between then and June 2020 to take advice on her employment situation. This was against the backdrop of the Claimant saying that she was, in her words, being continuously discriminated against because of her race throughout her employment. And yet, at no time, despite knowing of the existence of Citizens' Advice, did she seek to avail herself of their services so that she would be aware of how and when to bring her claim.

154. In addition, there were a number of different alleged acts of discrimination carried out by different people in the Respondent's organisation. Even taking those allegations at their highest, we were unable to find that there was any continuing act of discrimination which would have brought allegations, which were otherwise out of time, in time.

155. For the Respondent, we had to weigh into the balance that allegations pre-dating 27 December 2019, by definition, were out of time and therefore stale. They were historic, which impacted on the Respondent's

ability to respond to them and provide evidence in response to them. Indeed, in the evidence that we saw and heard, the Respondent's witnesses were at times unable to remember events because of the time that has passed since they occurred.

156. For all those reasons, we found, on balance, that it was not just and equitable to extend time to allow those allegations that predated 27 December 2019 to proceed.

157. However, we reiterate that such a conclusion was academic because we found that none of the complaints of discrimination, including those that predated 27 December 2019, were made out.

EMPLOYMENT JUDGE S POVEY
Dated: 11 March 2024

Order posted to the parties on
11 March 2024

For Secretary of the Tribunals
Mr N Roche

APPENDIX

List of Issues

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 27 December 2019 may not have been brought in time.

1.2. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal is to 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 is to 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. Direct Race Discrimination (s.13 Equality Act 2010)

2.1. The Claimant's race is black African and she compares herself with a possible combination of real people and a hypothetical comparator. This information is provided in the Scott Schedule at pages 41-56 of the Bundle.

2.2. Did the Respondent do the following things:

2.2.1. Continually extend the Claimant's probation period without reasonable cause;
2.2.2. Repeatedly criticise the Claimant and her work;
2.2.3. Fail to provide proper, sufficient and structured training;
2.2.4. Fail to ensure the Claimant's computer was fixed in a timely manner;
2.2.5. Allow managers to speak and raise their voice to the Claimant in an unreasonable way; 2.2.6. Allow a Sera Griffiths to ask the Claimant to go to the bank rather than doing it themselves;
2.2.7. Allow Sera Griffiths to ask the Claimant to clean a dirty window but didn't ask any other colleagues to do so or do it herself;
2.2.8. Refuse to furlough the Claimant;
2.2.9. Dismiss the Claimant without warning, consultation and fail to follow the disciplinary policy.

2.3. 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.

2.4. If it was less favourable treatment, was it because of the Claimant's race?

2.5. Did the Respondent's treatment amount to a detriment?

3. <u>Harassment related to race (s.26 Equality Act 2010)</u>

3.1. Did the Respondent do the following things:

3.1.1. Allow Sion Jones and Dylan Morris to cause tension in the office by: never saying hello in response to the Claimant's greetings; complaining that the Claimant was too quiet; swapping from English to Welsh when the Claimant entered the office; Dylan Morris standing up from his desk and angrily exiting the room for no reason;
3.1.2. Allow Sion Jones to refer to 'bloody foreigners' in the presence of the Claimant;
3.1.3. Allow Dylan Morris to use terms such as 'third world war' in reference to visitors to Wales;
3.1.4. Allow colleagues to speak in Welsh in order to exclude the Claimant from conversations, but in English when they intended to harass her;
3.1.5. Allow Sion Jones, Dylan Morris and other to say that the Claimant's job 'should have been given to a Welsh girl';
3.1.6. Allow Sion Jones and Dylan Morris to laugh at the Claimant when she made a mistake;
3.1.7. Allow Ann Hawley to stand behind the Claimant giving her funny looks and repeatedly asking how her braids were done
3.1.8. Allow Sion Jones to ask the Claimant to move from the scanner in the corridor, but not ask anyone else to do the same;
3.1.9. Allow Ann Hawley to say to the Claimant that people in the area are 'very Welsh Welsh';

3.2. Was that unwanted conduct?

3.3. Did it relate to the Claimant's race?

3.4. Did it have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.5. 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.

4. Failure to supply a statement of employment particulars

4.1. When these proceedings were begun, was the Respondent in breach of its duty to give the Claimant a written statement of employment particulars or of a change to those particulars? The Respondent concedes that it was in breach.

4.2. Are there exceptional circumstances that would make it unjust or inequitable to make the minimum award of two weeks' pay under section 38 of the Employment Act 2002? If not, the Tribunal must award two weeks' pay and may award four weeks' pay.

4.3. Would it be just and equitable to award four weeks' pay?