Case No: 2301115/2021
2303344/2021
2300506/2022

EMPLOYMENT TRIBUNALS

Claimant: Ms H Toure

Respondent: Commissioners for His Majesty's Revenue and Customs

Heard at: **Croydon** **On:** **18, 19, 20, 21, 22, 25, 26, 27, 28 March 2024; 16,17 and 18 April 2024 (in chambers)**

Before: **Employment Judge Leith**
Mr J Hutchings
Mr R Singh

Representation
Claimant: In person (18 – 22 March 2024); Mr Lennard, lay representative, acting *pro bono* (25 & 26 March 2024); in person, assisted by Mr Lennard (27 & 28 March 2024)
Respondent: Mr Dilami (Counsel)

JUDGMENT

1. The complaint of victimisation set out at paragraph 2.3.2.7 of the list of issues is dismissed upon withdrawal.

2. The complaint of discrimination arising from disability set out at paragraph 4.3.1.2 of the list of issues is dismissed upon withdrawal.

3. The complaints of harassment related to race set out in paragraphs 2.2.1.1, 3.2.1.8 and 3.2.1.10 of the list of issues are well founded and succeed.

4. The complaints of harassment related to disability set out in paragraphs 3.2.1.4, 3.2.1.5 and 3.2.1.14 of the list of issues are well founded and succeed.

5. The remaining complaints of harassment (related to race, religion and belief and disability) fail and are dismissed.

6. The complaints of victimisation set out at paragraphs 2.3.2.8, 2.3.2.17 and 3.3.2.2 of the list of issues are well founded and succeed.

7. The remaining complaints of victimisation fail and are dismissed.

8. The complaint of discrimination arising from disability set out at paragraph 4.3.1.1 of the list of issues is well founded and succeeds.

9. The complaint of direct race discrimination fails and is dismissed.

10. The complaint of direct disability discrimination fails and is dismissed.

REASONS

Claims and issues

1. The claimant claims harassment (relating to race, religion and belief and disability), victimisation, discrimination arising from disability, direct race discrimination and direct disability discrimination.

2. A Preliminary Hearing took place before Employment Judge Siddall on 9 August 2022. The issues in the claim were discussed and agreed at that hearing. The final list of issues was ratified by Employment Judge Siddall on 7 December 2022 (with further particularisation of the Respondent's objective justification being added on 21 March 2023). The final agreed list of issues is appended to this Judgment.

3. During the hearing, the Claimant withdrew two allegations – one of victimisation (paragraph 2.3.2.7 on the list of issues) and one of discrimination arising from disability (paragraph 4.3.1.2 on the list of issues).

The format of this Judgment

4. The Claimant has brought three separate claims against the Respondent. The have been consolidated. The claims contain a number of factual allegations. In total, the claim consists of:
    4.1. 23 allegations of harassment
    4.2. 19 alleged protected acts
    4.3. 26 alleged detriments (for the purposes of the victimisation claim)
    4.4. One allegation of discrimination arising from disability (one having been withdrawn)
    4.5. One allegation of direct race discrimination
    4.6. One allegation of direct disability discrimination

5. The list of issues alone runs to eleven pages. The factual matters underpinning the claim cover a period of around two and a half years. The judgment is necessarily, therefore, a long one.

6. We have endeavoured to keep this document as succinct as possible. In order to assist in that endeavour, we have cross-referenced the list of issues extensively (using the format [LOI X.X.X.X]). We have not restated each factual allegation in the list of issues on each occasion we refer to it. The judgment is therefore most easily read alongside the (appended) list of issues.

<u>Witness evidence</u>

7. We heard evidence from the Claimant.

8. On behalf of the Respondent, we heard evidence from:
   - 8.1. Uzzal Alam, a Customer Service Advisor in the Croydon office.
   - 8.2. Hugh Henderson, a Team Leader in the Croydon office.
   - 8.3. Ketan Tanna, Senior Officer in the Debt Management Field Collection Team.
   - 8.4. Kiki Tselika-Scott, who at the relevant times was a Customer Service Advisor in the Croydon office.
   - 8.5. Kuna Arunachalam, a Technical Adviser
   - 8.6. Melanie Lloyd, Site Lead for the Debt Recovery Team in Maidstone then (from February 2021) Stratford.
   - 8.7. Nicky Young, a Team Leader in the Croydon office
   - 8.8. Robert John, a Team Leader in the Canary Wharf office, and subsequently Stratford office.
   - 8.9. Sarah Noble, who at the relevant times was a Team Leader in the Croydon office.
   - 8.10. Ted Watson, PCS Trade Union representative.
   - 8.11. Wendy James, Operational Team Leader in the Croydon office.
   - 8.12. Dennis Gregory, Debt Management Site Lead for the Croydon office.
   - 8.13. Graham Brazier, who was a Higher Officer in the Respondent's Croydon office prior to his retirement on 31 December 2022.

9. All of the witnesses gave their evidence by way of pre-prepared witness statements, on which they were cross-examined.

<u>Mr Gregory</u>

10. At the start of the hearing, there was an application by the Respondent to rely on the witness statement of Mr Gregory. Slightly surprisingly, the application was only made in the face of the Tribunal, although the Claimant had objected in writing to Mr Gregory's witness statement some weeks previously.

11. The background was that Employment Judge Siddall had directed parties to exchange their witness statements by 31 May 2023. The parties had then apparently agreed an extension of time, with statements to be exchanged on 1 February 2024. On that date, the Claimant sent her witness statement to the Respondent, and the Respondent sent 12 witness statements to the Claimant. Mr Gregory's statement was not sent to the Claimant on that date. Instead, it was sent to the Claimant electronically on 2 February 2024, the following day.

12. The Respondent's explanation (albeit not supported by evidence) was that Mr Gregory was in hospital on the agreed date for exchange, so was not in a position to approve his statement until the following day.

13. Mr Gregory's statement was relatively short – only 5 pages. It was sent to the Claimant only one day after the other statements had been exchanged. The effect was that the Claimant still had the statement over six weeks before the final hearing. And there was no suggestion that his statement was tailored to meet the Claimant's evidence. We were consequently satisfied that there was no real forensic prejudice to the Claimant if we admitted the statement.

14. On the other hand, Mr Gregory was accused of harassment and victimisation. If he was not permitted to give evidence, there would be considerable prejudice to the Respondent. There would also be considerable prejudice to Mr Gregory himself, given that we would have to make findings about whether he had committed acts of discrimination without him having had the opportunity to answer those allegations (and in circumstances when he was obviously keen to do so).

15. We did of course bear in mind that the Respondent was legally represented, and the Claimant was not. The way the matter was handled by the Respondent left something to be desired. The Respondent did not, apparently, ask the Claimant in advance if Mr Gregory's statement could be sent late, or the date of exchange could be postponed by a day. The Claimant was not even told, when statements were exchanged on 1 February 2024, that there would be one statement to follow. It was simply presented to her on 2 February 2024 as a fait accompli.

16. But taking a step back, and given the significant prejudice to the Respondent if we did not allow the statement when compared to the relatively limited prejudice to the Claimant if we did allow it, we considered

that it would be proportionate and in accordance with the overriding objective to permit the Respondent to rely on the statement of Mr Gregory. So, we allowed Mr Gregory's statement to be adduced.

Mr Tanna

17. The Respondent also applied for Mr Tanna to give evidence remotely by video.

18. Mr Tanna lives in the East Midlands. There was before us medical evidence, in the form of an Occupational Health report. That report indicated that Mr Tanna had suffered three cardiac events since 2018, the most recent of which was in April 2023. He was awaiting a cardiac MRI. He had also been diagnosed with bronchiectasis, and had ongoing symptoms of fatigue. The report advised that there was a risk of recurrence of a cardiac arrest. The Occupational Health advice recommended that Mr Tanna be permitted to participate in the Tribunal by video, not least because he would be unable to travel to Croydon for the day so would need to stay away from home to participate in the hearing.

19. The Claimant objected to the Respondent's application. She made the point that she also has health issues, and that she had also applied to attend by video but was not permitted to do so. In that regard, we bore in mind that the Claimant's application had been to participate from Cote D'Ivoire. The Cote D'Ivoire government which has not given consent for Tribunals to hear evidence remotely from within its jurisdiction. So, while we could understand why the Claimant felt aggrieved by the situation, her position was very different to that of Mr Tanna. We reminded ourselves that we had to consider the application in respect of Mr Tanna on its own merits.

20. In respect of Mr Tanna, we considered that it would be in accordance with the overriding objective for him to give evidence via CVP, given:

    20.1. The availability of the technology for him to do so; and
    20.2. The risk to his health, based on the medical advice before us, of travelling to Croydon to participate in the hearing in person.

21. We therefore allowed Mr Tanna to give his evidence by video.

Interjections from the public gallery

22. The Tribunal spent most of the first day reading. The Claimant's evidence started at 15:15 on the first afternoon, and continued until the end of the fourth day. The Respondent's evidence started at the start of the fifth day, and ended on the morning of the ninth day. The remainder of the ninth day was taken up with submissions.

23. On the first day of the hearing, no witnesses attended from the Respondent. Mr Dilami attended, along with his instructing solicitor.

24. On the second day of the hearing, several of the Respondent's witnesses attended. There were also some members of the public in attendance on that day. The Claimant expressed some concern about the number of people present in the hearing room. We explained to the Claimant that the hearing was taking place in public, and that the Respondent's witnesses were entitled to be there. We also explained to everyone present that anyone observing the hearing from the public gallery should remain silent, and should not seek to either interfere with or comment on the evidence (although they could quietly pass notes up to Counsel).

25. On the fifth day of the hearing, while Mr Henderson was giving evidence, he was asked a question about the ethnic make-up of his team. He struggled to answer, and he looked towards the public gallery. Mr Alam could be seen to be gesturing, very obviously, to Mr Henderson. We reminded all present that they must not interfere with the evidence, and that anyone in the public gallery should remain silent. We asked Mr Dilami also to remind the Respondent's witnesses of the importance of conducting themselves appropriately while they were observing the hearing.

26. We do not draw any inference from Mr Henderson apparently requiring assistance from the other witnesses to answer the question. The question was not one which went to the heart of the claim.

27. On the eighth day of the hearing, we finished the evidence of Ms Lloyd at around 11:30 am. At that point, there were four witnesses remaining for the Respondent. The next witness was to be Mr Brazier. We asked the Claimant to update us regarding approximately how many questions she anticipated having for each of the remaining witnesses. When the Claimant attempted to tell us how many questions she had for Mr Brazier, he interrupted loudly (from the public gallery) to tell the Claimant that she was mispronouncing his name. The tone of his interruption was abrupt and aggressive.

28. The Claimant has a noticeable French accent. We consider that when she said Mr Brazier's name, she did so in her own, natural accent. Both Mr Dilami and the Tribunal had already used Mr Brazier's name in the exchange prior to the Claimant using it. There could therefore have been no reasonable doubt about who was being referred to, and no doubt that there was a shared understanding about the correct pronunciation of his name.

29. Mr Brazier was not present on either day two or day 5 of the hearing. We do nonetheless draw an inference from Mr Brazier's interjection. We deal with it in our conclusions.

<u>Documents and late disclosure:</u>

30. We had before us at the start of the hearing a bundle numbering 1,066 pages. Further documents were disclosed during the course of the hearing. We set them out below. WE explained to the parties that we would not read every document in the bundle, only those we were specifically taken to in the course of evidence and submissions.

31. On the second day of the hearing the Respondent disclosed an automatically generated transcript of part of the Claimant's grievance appeal meeting. The appeal meeting had taken place via Microsoft Teams and had been recorded. The Respondent's position was that only one part of the recording was available, as the other part could not be accessed for unspecified technical reasons.

32. On the third day of the hearing the Respondent disclosed unredacted copies of some documents which previously been received by the Claimant in response to a Subject Access Request (and consequently had some redactions on them). The Claimant disclosed email exchanges with her Trade Union, PCS. We allowed both sets of documents to be adduced by agreement.

33. At the end of the fifth day of the hearing, and having been prompted by the Tribunal earlier in the hearing, the Respondent disclosed a bundle of 176 pages. These were documents which had been sent to the Claimant in response to a Subject Access Request ("SAR"), but not previously disclosed within the Tribunal proceedings. The copies that had been sent to the Claimant in response to her SAR were redacted. A number of them had, at the Claimant's request, already been included in the final hearing bundle in their redacted form.

34. The Respondent's explanation was that the documents sent as part of the SAR were not fully cross-checked, so that the Respondent's solicitors failed to spot that there were some documents that had not been disclosed within the Tribunal proceedings. Mr Dilami very frankly (and entirely correctly) noted that the explanation was an insufficient one.

35. On the sixth day of the hearing, Mr Dilami was able to provide a further explanation. This was that the Respondent had initially believed that the SAR team had not retained an unredacted copy of the documents gathered to send to the Claimant in response to her SAR. They had subsequently discovered that unredacted copies had, in fact, been retained. As an explanation, we considered that to be far from adequate. It implied a troubling lack of rigour in the Respondent's approach to disclosure.

36. In the event, neither party sought to adduce the bundle of 176 pages, so it was not adduced into evidence.

37. Also on the sixth day of the hearing, the Respondent adduced a further two page email, which had apparently been inadvertently overlooked by Mr John. That email was adduced by agreement.

38. On the seventh day of the hearing, the Respondent disclosed an email written by Ibie Osagie, and a copy of a complaint made by the Claimant to the PCS Union. Neither party sought to have those documents adduced, so they were not adduced into evidence. We do not criticise the Respondent for the late disclosure of those documents. The Claimant's complaint to the PCS Union would not have been a document within the Respondent's possession until they were sent a copy of it by the Union, which was apparently only during the course of the hearing. The email from Ibie Osagie was only written on the sixth day of the hearing, so could not have been disclosed any earlier than it was.

39. While we have criticised the Respondent's approach to disclosure, we should record that none of that should be taken as a reflection on Mr Dilami. Mr Dilami conducted the case on behalf of the Respondent entirely properly. He was scrupulous in the assistance he provided to the Tribunal, and indeed to the Claimant (for example, assisting her to locate page references in the bundle during cross-examination). We are grateful for his assistance.

Representation and submissions

40. For the first five days of the hearing, the Claimant represented herself.

41. At the start of the sixth day of the hearing, the Claimant attended with Mr Lennard. Mr Lennard informed the Tribunal that he was a family friend, acting *pro bono* – that is, that he was not receiving any fee for representing the Claimant. We explained to the Claimant that it may be difficult for Mr Lennard to take over her representation part-way through the hearing, as he would not have heard what had happened during the first five days of the hearing. We explained that she could give instructions to Mr Lennard while he was cross-examining witnesses, but that if he was conducting the cross-examination then she would not be allowed to question the witnesses directly. We explained that as a matter of fairness, all of the questions for the witnesses needed to come from one source (whether that was the Claimant or Mr Lennard). The Claimant confirmed that she did want to be represented by Mr Lennard.

42. At around quarter to four on the seventh day of the hearing, during the evidence of Mrs Lloyd, the Claimant asked if she could take over cross-examination. We explained to the Claimant that she could take back over presenting the case herself for the remainder of the hearing if she wished to do so. The Claimant indicated that she did want to do that. We finished slightly early to allow her to gather her thoughts, and resumed Mrs Lloyd's evidence on the morning of day 8. The Claimant represented herself for day 8 and day 9 of the hearing, with occasional assistance from Mr Lennard. On

several occasions, we had to ask Mr Lennard to refrain from speaking to the Claimant while a witness was answering a question, as it was important that the Claimant heard the witness's evidence.

43. We received written submissions from Mr Dilami and Mr Lennard (on behalf of the Claimant). We then heard oral submission from Mr Dilami. We explained to the Claimant that it was a matter for her whether she wanted Mr Lennard to give oral submissions on her behalf, or whether she wished to give make oral submissions herself. She chose to make her own oral submissions. We should record that during the parts of the hearing where the Claimant represented herself, she did so with considerable skill.

<u>Vicarious liability for the actions of Mr Watson</u>

44. The Claimant makes allegations of discrimination against Mr Watson. Mr Watson is an employee of the Respondent. He is also a Trade Union representative for the PCS Trade Union. It was in the latter capacity that he interacted with the Claimant.

45. We raised with the Respondent at the start of the case whether any point was being taken about vicarious liability for Mr Watson. Having taking instructions, Mr Dilami confirmed on day 3 of the hearing that the Respondent would not seek to content that it was not vicariously liable for the alleged acts of Mr Watson (as set out within the claim).

<u>Fact findings</u>

46. We make the following findings on balance of probabilities. We have not dealt with every area canvassed before us; rather, we have focused on those necessary to reach a conclusion on the issues in the claim.

47. The Respondent is a non-ministerial department of His Majesty's Government. It is responsible for tax collection, compliance and enforcement.

48. The Claimant is a French national of African origin. She is Muslim. It is common ground that at all relevant times she had a disability, for the purpose of the Equality Act 2010, by reason of:

    48.1. A Microprolactinoma with a 7mm Pituitary's tumour; and
    48.2. Asthma.

49. The Claimant was employed by the Respondent from 14 October 2019 as a Customer Service Consultant/Administrative Officer. Her place of work was the Respondent's Croydon office [134].

50. The Claimant's line manager was Hugh Henderson. Mr Henderson managed a team of around 10. Kiki Tselika-Scott and Uzzal Alam were members of the same team. Both were appointed at around the same time as the Claimant. A number of other new employees were also appointed at the same time.

51. Mr Henderson's team were based on the 8th floor of the Croydon office. Around 200 people worked on the 8th floor. The 8th floor was also home to the staff canteen.

52. On or around 20 October 2019, the Claimant attended a training session on telephone call handling (on the evidence before us, the date given for the session varied – we do not need to make a finding on the precise date). The training was led by Michael Lambert. A number of other new starters were present at the training session, including Mr Alam. For part of the exercise, the Claimant and Mr Alam had to work as a pair, on an exercise where one of them would read a passage of text and the other would have to repeat it.

53. Mr Alam's evidence was that during the training session, in response to a question from the trainer about what made people difficult to understand on the telephone, he said "pronunciation and accent". Mr Alam agreed in his evidence to the Tribunal that he had mentioned both pronunciation and accent. His evidence to the Tribunal was that he has never denied using the word "accent" during the training session. The Claimant's evidence was that Mr Alam pointed at her when making the comment about pronunciation and accent. Mr Alam denied that.

54. It was put to Mr Alam in cross-examination that his feedback would not have been pleasant for the Claimant, as a non-native English speaker, and would be uncomfortable when made in front of the rest of the group. Mr Alam's evidence was that as part of his freedom of speech, he was allowed to give his opinion. His evidence was that he did not dislike accents, and that his late mother had an accent.

55. On or around 12 December 2019, the Claimant had a conversation Mrs Tselika-Scott. It is common ground that she told Mrs Tselika-Scott that Mr Alam had been mocking or making fun of her accent. Slightly surprisingly, Mrs Tselika-Scott's evidence was that she did not recall the Claimant making a "complaint" to her about Mr Alam, although she did accept that the Claimant had mentioned Mr Alam making fun of her accent. The Respondent accepts in any event that this was a protected act [LOI 2.3.1.1].

56. During the same conversation, Mrs Tselika-Scott then told the Claimant about an occasion where Mr Alam had been talking about a Nigerian person he knew. Mrs Tselika-Scott told Mr Alam that she was Nigerian, to which he responded something along the lines of "it's a good thing that you don't look like one".

57. Mr Alam, in his evidence, initially denied entirely that that interaction with Mrs Tselika-Scott took place. In response to a question from the panel about what guidance was given about appropriate behaviour in the office, he referred to "banter" in the workplace. When asked if he would have regarded the comment allegedly to Mrs Tselika-Scott as "banter", he said that a comment like that would have been, and it would not have been malicious. His evidence then appeared to evolve to be that if he had made the comment to Mrs Tselika-Scott it would have been in a group setting and would have been simply "banter".

58. We find that the exchange did take place broadly as described by Mrs Tselika-Scott, because:

    58.1. Mrs Tselika-Scott had no reason on the face of it to make it up. She is not the Claimant; she had nothing to gain from inventing an allegation about Mr Alam. Indeed, her evidence to the ET was that she was not offended by the comment.
    58.2. Mrs Tselika-Scott told the Claimant about it at the time, and there was also contemporaneous evidence of it being recorded in the meeting she had with Wendy James (to which we refer later).
    58.3. Mr Alam's evidence evolved to a degree. He went from denying entirely that it happened to suggesting that if it did happen, then it would have been "banter". This suggested a degree of ambivalence in his denial.

59. Also on or around 12 December 2019, the Claimant spoke to a Team Leader, Nicky Young, about the incident with Mr Alam. The Claimant's own Team Leader, Mr Henderson, was absent from work due to sick leave at the time.

60. There was some dispute about what the Claimant said to Mrs Young:

    60.1. The Claimant's evidence was that she described the situation and named Mr Alam.
    60.2. Mrs Young's evidence was that the Claimant told her that a colleague in the office had upset another colleague, a friend of hers, by saying he couldn't understand her accent. Her evidence was that the Claimant did not name either of the individuals involved. Her evidence was that after discussing the matter for around half an hour, the Claimant told her to forget that she had said anything.

61. We prefer the evidence of Mrs Young. Her evidence on the point was clear and internally consistent. Importantly, that was her only involvement in that matter. The Claimant had subsequently discussed the allegation with a number of other managers. We therefore consider it is inherently more likely that she would have been mistaken in her recollection about what she had said to Mrs Young, in that she may have conflated it with another conversation she had on a different occasion.

62. The Respondent accepted that what the Claimant told Mrs Young was a protected disclosure (even without Mr Alam being mentioned) [LOI 2.3.1.1].

63. The Claimant's case was that Mrs Young told Mr Alam about the complaint. Mrs Young's evidence was that at that time, she did not know who Mr Alam was by sight, and that at most she may have seen his name on a staff list. We again accept Mrs Young's evidence in that regard. The Claimant's case was based on supposition. Mr Alam had only worked for the Respondent for around two months, and he was not a member of Mrs Young's team. A number of other employees had started at the same time as the Claimant and Mr Alam. Approximately 200 people worked on the 8th floor. We find that Mrs Young did not know who Mr Alam was, so even if the Claimant had mentioned Mr Alam's name, Mrs Young would not have known who he was, and consequently could not have told him about it [LOI 2.3.2.1].

64. On 13 December 2019, while the Claimant was heading towards the lifts to leave the office for the day, Mr Alam was by the foyer. There was some dispute about what happened:

    64.1. The Claimant's evidence was that Mr Alam was standing by the lift as she went to leave for the night, and that he filmed her on his phone.
    64.2. Mr Alam's evidence was on the phone to Thames Water at the time, and that he raised a hand to wave goodbye to the Claimant.

65. There was in evidence before the Tribunal notes of a meeting between the Claimant and two team-leaders, Ibie Osagie and Mithran Rajaratnam [144]. The notes recorded that the meeting took place on 13 December 2019 at around 17:30. They recorded the lift incident as follows:

> "Kani Toune mentioned that she was on her way home by the lift around 05.15 pm on the 08th Floor. Suddenly she saw a person was putting his hand in between the lift door to stop the door closing. The door open and on the other hand the mobile phone camera was focusing on to her and Uzzal Alma did not get in to the lift. She was not sure did he take a photo or not. Later the lift door close. Kani Toune was afraid and got off the lift on the next floor. She was on tears while she was talking to me & Ibie."

66. The notes went on to refer to Mr Alam making comments during training about her accent, and also to the comments Mr Alam had alleged made to Mrs Tselika-Scott. The notes recorded that neither the Claimant nor Mrs Tselika-Scott had previously raised the matter with a Team Leader.

67. We find that Mr Alam was on the phone to Thames Water on his mobile phone, and that he did wave or gesture to the Claimant. In his later email to Mrs James (which we deal with later in this judgment), he referred to being

in a position to share call logs from his mobile phone. They were not in evidence before us. However, we consider it is unlikely that he would have proactively offered to share his call logs unless he knew they would support his version of events.

68. There was some discrepancy in the evidence about whether Mr Alam pressed the lift button for the Claimant. Given the passage of time, we consider that that is unsurprising.

69. We bear in mind that the Claimant would have been particularly sensitive to what Mr Alam was doing, given that she had complained about the incident in the training (albeit on an anonymous basis). We find that the Claimant simply misinterpreted the situation.

70. On 18 December 2019, Mrs James met the Claimant to discuss the situation. There were notes of that meeting in evidence before us [145]. The Respondent accepted that the Claimant did a protected act at the meeting [LOI 2.3.1.2].

71. There was some dispute about other comments said to have been made at the meeting:

    71.1. The Claimant's evidence was that Mrs James asked why the Claimant wore a headscarf, and that when the Claimant explained that she was wearing it for religious reasons, Mrs James told her that her own daughter wore a headscarf although she did not know why. The Claimant's evidence was that this was said in a disapproving tone. Her evidence was that Mrs James also told her that colleagues were jealous of her [the Claimant] because she was beautiful and curved.

    71.2. Ms James' evidence was that she did not make those comments in that meeting. Her evidence in her witness statement was that she did discuss the Claimant's headscarf with her on other occasions, and did mention her daughter, although not in disapproving terms. Her evidence was also that she had called the Claimant a "beautiful black woman" and referred to her having a "sexy voice", although again not in the meeting on 18 December 2019. Her evidence was that the conversation when she told the Claimant she had a "sexy voice" happened before the COVID lockdown. She denied using the word curved. Her evidence was that when she used the words "beautiful black woman" as, effectively, an affirmation.

72. We do not consider it is necessary to make a finding on whether Mrs James used the word "curved", given the wording of the allegation. This is not a complaint of sex discrimination or sexual harassment, where the distinction between "beautiful" and "curved" may be an important one. The relevant

allegation is that Mrs James made reference to the Claimant's appearance. We find that she did do so.

73. We find also that she made reference to the Claimant's headscarf (indeed, she accepted in evidence that she did).

74. We find the comments were not made in the meeting on 18 December 2019, because:

    74.1. They were not referred to in the notes of the meeting (although of course the notes were not verbatim).
    74.2. When the Claimant sought to add this to her grievance (which we deal with later), she did not say that the comments were made in the meeting on 18 December 2019. [345]
    74.3. We consider it is inherently unlikely that Mrs James would make such comments when she was in the process of informally investigating a complaint of discrimination.

75. On the same day Ms James also met with Ms Tselika-Scott. Mrs James' notes of that meeting were in evidence before us [850]. They recorded that:

    75.1. Mrs Tselika-Scott recounted the incident where Mr Alam told her it was a good thing she didn't look Nigerian, and told Mrs James "I felt offended".
    75.2. Mrs Tselika-Scott told Mrs James that the Claimant had told her about the incident with Mr Alam at the lifts, and that based on what the Claimant had told her Mrs Tselika-Scott would say Mr Alam was bullying the Claimant.
    75.3. Mrs Tselika-Scott told Mrs James that she just wanted to come to work, and did not want to deal with the group as she knew they must be talking about it.

76. Mrs Tselika-Scott's evidence was that while the notes were broadly accurate, she disagreed with each of those points. Her evidence was that she was not offended by the comment about not looking like a Nigerian, so she did not think she would have said that to Mrs James. Her evidence was also that she would not have known enough about what was going on between the Claimant and Mr Alam to express an opinion on whether he was bullying her. Her evidence was also that, while she did just want to go to work and didn't want to get involved in the Claimant's complaints, she was not concerned that anyone would be talking about her.

77. Ms James also met with Mr Alam. On 20 December 2019, Mr Alam emailed Ms James refuting the Claimant's allegations about him [851]. Within that correspondence, he said this regarding the exercise in pairs during the training session:

> "At one point I was paired with Kani to do a role play. We were instructed to read out a statement to each other and to repeat the statement vice versa. I recall really enjoying this part of the exercise and working with kani. I was asked by the trainer in front of the whole group to give feedback how I found doing the task. I recall responding to the trainer, in open group, that I found the task quite fun as did the rest of the team. I also stated that I found it hard to understand and repeat due to noise of others, (as I have a long standing hearing issue) and that I found it hard to repeat Kani's **pronunciation** of certain words at times, but this was properly due to the background noise. The trainer then explained to the whole group, that is what he expected, as on the job, people's recollection can be short and that accents, pronunciation and other issues will need to be considered when we start doing our jobs as debt collectors on the phone." [His emphasis]

78. He then went on to say this:

> "I cannot fathom why Kani has singled me out when this was a group training and at no time did she indicate to me or others that she was in anyway affected by the feedback I gave, alongside other team members who also gave similar feedback to the Trainer. I did not reference her accent just **pronunciation** of words. This is not what the role play was about and I respect my colleagues and celebrate our cultural diversity at work. I cannot understand why she states I mocked her accent. **This is entirely false narrative and I refuse to accept such an allegation.**" [His emphasis]

79. Mrs James then organised a meeting with the Claimant and Mr Alam. The Claimant's evidence was that the meeting took place on 19 December 2019. Mrs James' evidence in her witness statement was that it took place on 23 December 2019.

80. We do not need to reach a positive finding on the date; we find that it took place after Mr Alam's email to Ms James.

81. There was a note of that meeting in evidence before us [444]. The note was signed by all three participants (although it was undated). The note recorded that the meeting started with the Claimant explaining how she felt after the call handling training, and that Mr Alam said that he was "mortified" and apologised. The notes then said this:

> "Kani accepted his apology, although they did not both agree with the events they both discussed the word "accent and pronunciation", Kani then provided evidence that the word accent was used and not pronunciation as Uzzal had said he used."

82. After some further discussion, the notes recorded Mrs James said this:

"I explained that HMRC takes these types of allegations seriously, that they must both make themselves familiar with the respect at work charter. I said it looks as if they have cleared the air as I am trying for this not to be escalated any further unless this meeting had not resolved anything.

Kani agreed not to take any further actions at this time and Uzzal agreed to be more aware of this behaviour and soundings."

83. Mr Alam's oral evidence in Tribunal was that prior to that meeting, he was "already guilty". When asked by the Tribunal what that meant, his evidence was that in everyone's eyes he was already guilty, because when a female person complains the male is always the guilty person straight away. He said that that was "real life" and that was why he wrote the email he did to Mrs James. He then expanded that in any process, the male is always guilty and the woman is always the victim, and there is no equality. His evidence was that, in effect, he did not wholly agree with what was captured in the meeting note, although he had signed it at the time.

84. Although Mr Alam's evidence to the Tribunal was that he always accepted the had used the word "accent", we do not accept that evidence. It is inconsistent with what he said in his email of 20 December, as well as what was recorded in Wendy James' notes of the meeting.

85. The Claimant alleged that, on 24 December 2019, a colleague said to Mr Alam (within her hearing) that the Claimant was "evil", and that "holy water was needed for the evil". Her evidence was that the colleague did not say he was talking about her. Her evidence to the Tribunal was that they were looking at her when she said it, which is why she inferred it was about it. Mr Alam denied this.

86. We find that, if the comments were made at all, they were not made about the Claimant. The Claimant's allegation was vague. The detail about the (unnamed) colleague looking at her came out for the first time in oral evidence. Even taking it at its highest, the Claimant's evidence was merely that she overheard a comment made by someone who may or may not have been looking at her, and inferred that that comment was about her.

87. Mr Henderson returned to work in January 2020. The Claimant's evidence was that in or around January 2020, she attempted to raise an informal complaint with Mr Henderson about Mr Alam, and he told her to "let it go".

88. Mr Henderson's evidence was that he could not recall having any such conversation with the Claimant (although he did not go so far as to actively deny that it happened).

89. We consider that, on balance, it is more likely than not that the Claimant did raise the matter with Mr Henderson, to update him on his return to work. We bear in mind that on his return to work, Mr Henderson would have had a considerable backlog of work – his evidence was that he had 900 unread emails. His evidence was that it would be out of character for him to discourage an employee from raising a grievance, and that indeed he supported the Claimant to raise a formal grievance at a later stage. That is consistent with the evidence he gave to the Tribunal about the Claimant's grievance (which we deal with later in our judgment).

90. There was no suggestion that the Claimant followed up further with Mr Henderson, or sought to raise the matter again either with him or with Mrs James in January 2020.

91. We find that:

    91.1. The Claimant did raise the matter with Mr Henderson, and told him about the meeting with Mrs James and the outcome of that meeting.
    91.2. Mr Henderson would have understood from what he was told that the matter had been resolved following the meeting with Mrs James (who was, of course, his line manager).
    91.3. Whether or not he used the words "let it go", he encouraged the Claimant to move on, consistent with what had been agreed in the meeting with Mrs James.

92. From March 2020, due to the onset of the COVID pandemic, the Claimant worked from home.

93. The Claimant had been entered into an apprenticeship programme as a Level 3 Operational Delivery Officer as part of her training with the Respondent. She was required to sign an Apprenticeship Agreement [150]. There was apparently an issue with the paperwork for her apprenticeship being lost or going missing. The Claimant's evidence was that she followed this up with Ray Stevenson, a Team Leader in the Stratford office who was coordinating the apprenticeship programme. Her evidence was that when she did so, he raised his voice at her and told her she needed to wait because he was busy.

94. The Claimant's evidence was that she tried to raise the issue and Mr Stevenson's response with Mr Henderson in or around April 2020, and that he cut her off. She accepted in the course of cross-examination that she had not explicitly told Mr Henderson that she was raising an allegation of discrimination against Mr Stevenson. Her evidence was that she had intended to do so but was unable to do so because Mr Henderson cut her off. She accepted that she did not ever follow it up in writing.

95. Mr Henderson's evidence was that he could not recall the Claimant raising a complaint about Mr Stevenson. His evidence was that he told the Claimant in April 2020 that the apprenticeship programme had been put on hold because the impact of the COVID19 pandemic had changed the work carried out by Collectors (such as the Claimant). His evidence was that he may have said something like "don't worry too much about that", as in the context of the other changes happening at the time, the Claimant no longer needed to worry about getting documents together for the apprenticeship programme. [LOI 2.3.2.6]

96. The Respondent's policy was that while working from home, staff could claim up to £6 per week to cover increased utility bills due. The Claimant put in claims for the maximum of £6 per week. She also claimed for a desk chair, which again she was permitted to claim for [191]. The claims were authorised by Mr Henderson. However, there was apparently an issue with the way in which the Claimant submitted the claim and the supporting evidence provided.

97. Mr Gregory emailed the Claimant on 21 July 2020, and copied his email to Mr Henderson [188]. He indicated that he would need to see receipts for the sums spent. He also indicated that he would need an immediate explanation from Mr Henderson as to why he had authorised the claims.

98. On 22 July 2020 Mr Henderson produced a note regarding the situation [197]. He concluded as follows:

> "Hopefully, this should be enough to cover the fact that there was a genuine error somewhere along the line and that Kani is entitled to what she is currently claiming."

99. On 27 July 2020, the Claimant emailed Mr Henderson regarding the situation with her utilities expenses [203]. She also asked a question about training. Within the email, she additionally said this:

> "As mentioned before since I started with HMRC the welcoming for me has been very warm, I had a difficult experience being accused, shouted at, discriminated against…) mostly because of my foreign accent and origin. So I realised probably the organisation has some trust issues regardless of my level of commitmenet or engagement in my work for HMRC. I am feeling I have been under investigation and scrutiny from day one since I Started so I am ok with this investigation and the outcome." [*sic*]

100. The Respondent accepted that this was a protected act. [LOI 2.3.1.5]

101. Mr Henderson responded to the Claimant's email on the same day [202]. He responded to the other parts of her email, but he did not

acknowledge or engage with the Claimant's reference to being discriminated against.

102. Mr Henderson's evidence in his witness statement was as follows:

> "I am not aware that Kani raised an informal complaint on this date [27 July 2020]."

103. At the start of his evidence, Mr Henderson was taken to the Claimant's email. His evidence was that he was not shown the email when drafting the witness statement. His evidence was then that that if he had been shown the email at the time, he would have said he was aware of the complaint. He did not, however, give any evidence about why he did not engage with the complaint.

104. We deal with this in our conclusions. [LOI 2.3.2.8]

105. The Claimant's case was that, in August 2020, Wendy James made a further comment about the Claimant's headscarf, in that she referred to it as "this thing on top of your head". The Claimant's evidence was that the comment was made during a telephone call. Mrs James' evidence was that she had commented on the Claimant's headscarf while they were working in the office, but not on the telephone. By August 2020, the Claimant had been working from home for over four months. We find that the comment was not made, for the following reasons:

105.1. Mrs James was a candid witness. She accepted that she had raised the Claimant's headscarf in conversation. She accepted also that she had spoken to the Claimant in ways which, with the benefit of hindsight, she regretted – most notably, describing the Claimant as having a "sexy voice".

105.2. We consider that it is implausible that Mrs James would have raised the Claimant's headscarf in a telephone conversation, several months after she last saw her. So, while we have found that Mrs James did talk to the Claimant about her headscarf while they were working in the office together, we find that no such conversation took place in August 2020.

105.3. We also find that Mrs James did not refer to the headscarf as "this thing on top of your head". Again, we consider it unlikely, and inconsistent with the other evidence about how Mrs James conducted herself towards the Claimant and other colleagues, that she would have made that comment. [LOI 2.3.2.5]

106. Mr Henderson's evidence was that he had a practice, at that time, of keeping a list with the birthdays of each member of his team on it. His evidence was that he would use the list to wish members of his team a happy birthday, and if it was a "special" birthday he would arrange a card from the whole team. His evidence was that more than half of team leaders

would have done similar things at the time. We accept his evidence in that regard.

107. The Claimant's birthday is on the second of August. 2 August 2020 was the first time she had had a birthday during her employment with the Respondent. Mr Henderson mentioned her birthday in the team meeting on that date.

108. The following day, the Claimant emailed Mr Henderson as follows [209]:

> "Very kind the team wishes me my birthday, but wasn't willing to make it known, for personal reasons I am not celebrating it. I didn't know my birthday was on a list available to the team.
> Would you mind please taking it off the list please, or can you signpost me how to get it remove?"

109. Mr Henderson responded. He apologised and explained that he would remove the Claimant's birthday from his list. Mr Henderson's evidence is that he has subsequently changed his practice, in that he no longer keeps a list of birthdays, and only wishes someone a happy birthday if they say something to him which suggest that they are celebrating it. [LOI 3.2.1.2]

110. In August 2020, the Claimant came to believe that she was being denied or left out of training opportunities. She spoke to Chris Bentil (a Manager in Debt Manager). On 20 August 2020, Mr Bentil emailed Miranda McCarthy and Mr Henderson to ask that the Claimant be included in any training that was being delivered. Mr Bentil's email did not refer to the Claimant suggesting she had been discriminated against. The Clamiant accepted in cross-examination that she did not tell Mr Bentil that she considered that was being discriminated against based on her race, religion or disability (although she told Mr Bentil that she was being "excluded"). [LOI 2.3.1.6].

111. The Respondent's evidence was that not all collectors would receive all training, as they would be trained in areas that were relevant to the work they needed to carry out. The Claimant's evidence was that she did not know who was responsible for denying her training opportunities, but that it was someone in the training team. It was not suggested that there was any work the Claimant should have been doing but was unable to do because she had not had training. [LOI 2.3.2.9]

112. On 28 August 2020, the Claimant joined a Teams meeting with Kuna Arunachalam. Mr Arunachalam is a Technical Adviser. His role is to assist caseworkers with complex debt management cases, recovery of tax and enforcement procedures. Mr Arunachalam's evidence is that he was not a member of the Respondent's training team, and that he was not aware that

the Claimant had raised concerns about training with Mr Bentil. We accept his evidence in that regard.

113. The Claimant's evidence was that she believed that the Teams meeting she joined with Mr Arunachalam was for Business as Usual Restart training. Mr Arunachalam's evidence was that he had never delivered Business as Usual Restart training. The Claimant accepted in cross-examination that she may have joined the wrong Teams meeting. We find that that is what happened.

114. The Claimant started to ask Mr Arunachalam a question about a case she was working on. The Claimant's evidence was that Mr Arunachalam then ended the call or put her on hold.

115. There was in evidence before the Tribunal a Teams message exchange between the Claimant and Mr Arunachalam on the day in question [387]. At 12:29, the Claimant said this:

> "Hi Kuna, I was talking to you/ asking you a question and was unexpectedly put on hold..not sure what happened?

At 12:46, the Claimant then said this:

> "Anyway Kuna, that is fine, sorry for disturbing you I thogu you were here to help everyone without distinctions… it won't happen again. Have a nice Weekend."

Mr Arunachalam replied at 12:56 as follows:

> "Kani, I am sorry, I was signed on Two Chats Catch Up & MSD/Work Flow. I had come out of one. IF you need to ask anything Please give a call."

116. The Claimant did not call Mr Arunachalam back or make any other attempt to contact him following the Teams message.

117. Mr Arunachalam's evidence was that he could not remember hanging up on the Claimant on the day in question, but that he understood from the screenshotted message exchange that he would have been signed into two chats, and that one of them had to be placed on hold or cancelled for the other one to continue. We deal with this in our conclusions [LOI 2.3.2.10].

118. On 1 September 2020, the Claimant emailed Mr Gregory as follows (the email was not copied to anyone else) [231] [LOI 2.3.1.7]:

> "Good afternoon Dennis,

Sorry but I am a little confused as Wendy is not in at the moment and don't know who else to turn to..
For the past month I have been taken off all trainings; all my colleagues have been attending trainings on VAT, PAYE; CT; BAU, SEISS or JRS except me. Over many weeks now , I have been emailing and calling Stephen, Theresa and James to find out why I am not on any CQVID-19 schemes, or training list but I got no straight answer.
All my colleagues have been attending various trainings; even the ones who came back from Leave are getting invites but me. I then had to approach Chris for help as per bellow communication, Miranda explanation was like I wasn't really a priority right now. Subsequently I was then added to a VAT training and the invite was sent to me while I was off line Wednesday to attend a training on Thursday a day where I was unfortunately on sick leave so I couldn't attend. And my colleagues got a new invite for training today session scheduled for tomorrow except me, the only training I was invited to attend 2 weeks ago was the one on IT up skills.

On Friday last week 1 tried to attend a BAU restart training Kuna was hosting and because it was only him and me on the chat room no one else joined I asked him a question on PAYE and while I was talking to him, asking him my question, he just put the phone down on my. I then sent him a message on Team asking him what happened, he just told me he had 2 chatrooms opened so he had to close one , I assume he was referring to the training call we were both in which wasn't a chat..)

It has been more than a month I have been taken off everything for some unknown reasons, Am I still part of the team ?"

119. Mr Gregory responded as follows (copied to Mark Gills) [232]:

"Hi Kani,

How are you? I hope you are fully recovered after your bout of illness.

I must admit I'm surprised and disappointed by what you are experiencing at the moment, that should not be happening. You are of course still part of the Croydon team. I will put what has happened down to misunderstanding.

Mark,

Can you please get this looked into urgently please and re-assure Kani about what work she should be doing and make arrangements via Hugh to get any training required sorted? Let me know how you get on

Thanks”

120. In his witness statement, Mr Gregory referred to another occasion when the Claimant raised that she felt excluded during a Debt Management SLT Q&A session.He did not refer to the email exchange on 1 September 2020. At the start of his evidence, Mr Dilami took Mr Gregory to the email exchange and asked him if he wanted to change anything about his statement. Mr Gregory’s evidence was that he had seen that email exchange when preparing his statement, and that he did not want to change his evidence.

121. Mr Henderson did not take any steps in response to the Claimant’s email to Mr Gregory. It was not put to him in cross-examination that he was aware of the email at the time. [LOI 2.3.2.11]

122. On 28 September 2020, the Claimant raised an informal complaint with Julie Bradbury from the Respondent’s Mediation and Resolution Support Service (part of the HR function). The Respondent accepted that this was a protected disclosure [LOI 2.3.1.8].

123. On 30 September 2020, the Claimant told Mr Henderson that she thought that her complaint should be dealt with as a formal grievance [255]. The Respondent accepted that this was a protected disclosure [LOI 3.2.1.9]. Mr Henderson passed this on to Wendy James [255].

124. In October 2020, the Claimant passed her probationary period.

125. The Respondent had a practice of holding celebration meetings. The meetings were held approximately every month. Staff could nominate colleagues to be awarded a certificate. While staff were working from home due to COVID19, the meetings were held virtually via Microsoft Teams. The certificates would therefore be displayed on screen.

126. At a meeting on 5 October 2020, the Claimant was due to be presented with a certificate. Her certificate was not displayed on screen during the meeting.

127. Mr Gregory’s evidence in his witness statement was somewhat confused. The relevant passage said this:

> “At the meeting on 5 October 2020, the MS Teams software crashed when the Claimant’s certificate was being displayed on the screen. As a result, I didn’t get an opportunity to present her certificate on the screen.”

128. Mr Gregory was asked by the Respondent’s Counsel if there was any change he wanted to make to that part of his statement. He indicated that

there was not. His evidence was that it affected other employees who were due to have had certificates showed at the session, although he could not remember how many.

129. Mr Gregory did subsequently email a copy of the certificate to the Claimant, although only after she emailed to chase it up.

130. We accept Mr Gregory's evidence that the software crashed, meaning that the Claimant (and others) were unable to have their certificates displayed. It is inherently implausible that Mr Gregory or anyone else would have faked or staged a software malfunction simply to avoid showing the Claimant's certificate. It is much more plausible that the software simply crashed. We bear in mind that at that stage, the Respondent was still in the relatively early days of doing such things online. [LOI 2.3.2.12]

131. On 12 October 2020, Wendy James emailed the Claimant to invite her to an informal meeting to discuss the concerns she had raised [261]. She explained that Debbie Shah would be present as what she described as an independent note-taker. Ms Shah was the personal secretary to Jim Morgan and Dennis Gregory. The Claimant initially objected to Ms Shah being the notetaker; it transpired that she had been thinking about a different Debbie, and she then withdrew her objection.

132. The meeting took place on 15 October 2020. During the meeting, the Claimant told Mrs James about both of the conditions she relies upon as disabilities in these proceedings (Asthma and Prolactinoma). She told Mrs James about the medication she was taking [273].

133. Following the meeting, Mrs James sent a copy of the notes to the Claimant [262]. The Claimant made a number of comments on the draft notes. She also indicated that she wanted her grievance to be dealt with formally. Mrs James informed the Claimant that the notes were not verbatim but were accurate. She indicated that the Claimant's amendments had been noted and would sit alongside the note taker's notes. [278] We deal with this in our conclusions. [LOI 2.3.2.13]

134. In addition to the notes, Mrs James created her own note of the discussion, together with her suggested outcomes, which she passed to Mr Gregory. Within the note she said this:

> "I am of the opinion that this is more about Kani's perception on the way she interprets a given situation/event. Kani has made several allegations but with nothing substantial that I would say amounts to Harassment, bullying racial discrimination or victimisation.

I believe a lot of Kani's perceptions and believes could be due to a medical condition which I have asked Kani if she would consent to an HR referral. This she has refused."

135. The final paragraph of her note said this:

> "I am concerned that Kani will not be happy with any outcome suggested by DM as her sole intention is to be moved to another part of HMRC, if this is not possible another team as I believe there has been a breakdown in communication/relationship between Kani, Uzzal, Team Leader although Team leader and Uzzal are not aware of the breakdown. Kani should raise a formal concern so we can get to the root of her concern in order to resolve all of her concerns as an informal meeting such as this one will serve no purpose for Kani although I must add that I believe Kani is not acting reasonably and should be investigated under upholding our standards of conduct by an independent."

136. Her final recommendation was that there be a formal meeting to ascertain if the Claimant had breached the Respondent's standards of conduct.

137. Mrs James' evidence was that she made the recommendation because she was concerned by the number of allegations the Claimant had made. Her evidence was that the Claimant's allegations were baseless and were affecting a number of colleagues.

138. The document was not sent to the Claimant at the time, but was sent to her as in response to a Subject Access Request [1074B]. [LOI 3.2.1.4]

139. On 20 October 2020, Mrs James had a meeting with Julie Bradbury. Ms Bradbury's notes of the meeting said this [243]:

> "Wendy is concerned at the different perspective that Kani has regarding incidents and wonder if this may be as a result of side effects of the medication she takes."

140. Mrs James' notes of the meeting, which were disclosed to the Claimant in response to her Subject Access Request, said this [832]:

> "I told her about the medication she is taking and the side effects, such as headaches, tired, nausea but the one that resonated was "changes in the way you feel, thinking things that are not true" she has been on this medication from 2014, Julie suggested an OH referral as we know the effects of the medication, to help us manage the situation in terms if we have any obligation under the equality act,

[Redacted] said she has a pre-arranged catch up meeting this afternoon and she will do her best to challenge with a small c as she does not want to be added to the list (lol)"

141. Mrs James' evidence in her witness statement was that after the Claimant had told her about the medication she had taken in the meeting on 15 October 2020, she "did a bit of research to find out more about it". Her evidence was that this was her normal practice where a member of staff told her that they had a medical condition, and that she would always look at any side effects of medication a member of staff was taking. Her oral evidence was that she conducted the research by looking on the NHS website. Her evidence was that this was what she was told to do when she was receiving training as a team leader in the 1990s.

142. The Claimant's evidence was that Mrs James had never discussed this potential side effect with her. Her evidence was that it was not a side effect she experienced.

143. The Claimant contacted the PCS Trade Union about her situation. She spoke to Ted Watson. The Claimant's evidence was initially that the conversation took place on 6 September 2020. 6 September 2020 was a Sunday. The Claimant accepted in cross-examination that the conversation would not have taken place on a Sunday, and that she may have made a mistake regarding the date. Mr Watson's evidence was that the conversation took place in late October 2020, although he could not remember the exact date. We do not need to make a precise finding on the date, save to say that it took place at some point in September or October 2020.

144. The Claimant's evidence was that during the meeting, Mr Watson asked her if she was Nigerian. When the Claimant said that she was not, her evidence was that Mr Watson responded something like "Good, because Nigerian nationals are not trustworthy". Mr Watson denied making the comment. His evidence was that he has line managed Nigerians, and that while he would not generalise about any race or nationality, the Nigerian colleagues he had known were "lovely people". His evidence was also that he had, for many years, represented Ibie Osagie, who is the Claimant's comparator and who is of Nigerian origin.

145. On 27 October 2020, the Claimant emailed Mr Watson a copy of her grievance [637]. On 28 October 2020, Mr Watson emailed the Claimant to explain that there was a new PCS representative in Debt Management, Victoria Brown. He asked if Ms Brown could shadow him on the Claimant's case in order to build up her knowledge and experience.

146. The Claimant responded on 29 October 2020 that she had trust issues with any third party getting involved. She said this:

"I found it very strange she got in touch with you right at the time I got in touch with you. I am doubtful this will remain confidential as it should be. Ted, not sure anymore I made the right move getting PCS involved knowing the remification with HMRC, I should have joined a complete external Union maybe."

147. Mr Watson responded the same day as follows [635]:

"Of course, I will accept your wishes and not involve Victoria in your case.

But just to let you know Victoria didn't get in touch with me. Before I ever knew about you, we discussed new reps shadowing me or other experienced reps. This is the only way they can gain experience. When you approached me I thought this may a case, particularly as Victoria is your local rep. But as I say I fully appreciate your wishes and will not involve her.

Just to reassure you, no one - including Victoria - has seen the content of your complaint from me."

148. The Claimant subsequently made a complaint about Mr Watson to the PCS Union. That complaint was not in evidence before us. It was not disclosed by the Claimant, and the PCS Union is not a party to these proceedings. The Respondent apparently obtained a copy and disclosed it to the Claimant on the seventh day of the hearing, but neither party made an application to adduce it at that stage.

149. Mr Watson's oral evidence was that he was not aware of the complaint against him prior to the Claimant mentioning it during the hearing before us. His evidence was that having now seen it, the complaint did not refer to discrimination. Rather, his evidence was that the complaint was about the fact that the PCS Union had represented the individuals about whom the Claimant had complained, so there was a conflict of interest. It was not suggested to Mr Watson in cross-examination that that evidence was inaccurate, or that the Claimant's complaint alleged that Mr Watson had made a discriminatory remark. The Claimant did not, in her evidence, suggest that that was the subject of the complaint.

150. We accept Mr Watson's evidence that the complaint the Claimant made to the PCS Trade Union did not refer to the alleged discriminatory comment. We consider that it is implausible that, if the comment had been made, the Claimant would not have complained of it. She was not slow to complain when she felt that discriminatory comments were made, even where she was not the target of them – for example, she told Mrs James about Mr Alam's comments to Mrs Tshelika-Scott. So, we consider that it is inconceivable that she would not have referred to the alleged comment within the complaint she made to the PCS Union about Mr Watson.

151. We consider that the alleged remark is also entirely inconsistent with the support that Mr Watson provided to Ibie Osagie over a number of years, as her Trade Union representative. We found Mr Watson to be a clear and impressive witness. We prefer his evidence, and we find as fact that the comment alleged by the Claimant was simply not made. [LOI 4.2.1.3]

152. On 9 November 2020 the Claimant submitted a formal grievance [282]. The grievance was 11 pages long and contained a number of allegations against a range of colleagues. The Respondent accepted that this was a protected act. [LOI 3.3.1.1]

153. Because of the nature of the Claimant's grievance, she was transferred to the Respondent's Canary Wharf office on a temporary basis, for six months. The transfer was to take effect from 23 November 2020 [293].

154. On 20 November 2020 Mr Henderson emailed the Claimant. Within the email, he said this [301]:

> "I have confirmed to HR that you are happy with the outcome as you have the transfer you requested, but they have asked that you pop a note over to me confirming thus."

155. The Claimant responded as follows:

> "As per our telephone conversation I am satisfied with the current outcome as I have the transfer that I requested in the initial concern I raised which unfortunately had to be convey to HR into a formal Grievance. However, Dennis Gregory advised this would be a temporary option but I hope this outcome is a permanent transfer as I am concern I have to return and find myself in the future again in this kind of distressing situation. As long as my transfer is permanent, I am happy with the outcome."

156. Mr Henderson forwarded the Claimant's email to Stacey Alvis in the Respondent's HR department. Ms Alvis replied to him as follows;

> "I will speak with Dennis re-was it permanent so you can confirm back to Kani. I will email you as soon as I get a response. Kani would need to confirm she **wishes to withdraw** her grievance if she is happy with the outcome from the informal
> resolution." [Ms Alvis' emphasis]

157. Mr Henderson emailed the Claimant on 23 November 2020, saying this [306]:

"Sorry, HR have been on to me again: Your assurance that the formal grievance has been withdrawn as you have been transferred."

158. A little later the same day, Mr Henderson emailed the Claimant again, saying this [308]:

"I hope your first day is going well.

I have had a conversation with Wendy which I would like to update you on which is good news as far as you are concerned – I would like to have a quick chat with you about it when you have a moment."

159. A conversation took place between the Claimant and Mr Henderson, following which Mr Henderson emailed the Claimant against saying this [309]:

"As discussed on the telephone - I had a call with Wendy earlier where I was assured that if you withdraw your grievance, steps will be put in place to make your transfer permanent – This authority would come from our Grade 6.

I would suggest you use wording along the lines of "I am withdrawing my grievance of (date) as I am satisfied with the result of my request for transfer having been actioned…"

This would put us in a position of being able to end the matter."

160. The Claimant replied as follows: [310]

"As outlined during our telephone chat today. I would be satisfied with the outcome as my transfer as been actioned as promised.
However, within my grievance I raised few issues such as "the audit" and investigation about my utilities bills claims. I am currently incurring cost with heating and electricity as working full time from home, Could I have a written outcome with authorisation to make back dated and future claims as since August I have not been compensated for my cost.
Also, I would like to have reassurance this will be the end of it, I will not suffer any kind of retaliation in the future and the questionable treatment I suffer will not be repeated.
As this matter is finally resolved informally (which was my initial hope) and will not be on my record or be an obstacle for me to apply for promotion.
Could I have confirmation of the above and also some form of reassurance in writing please?"

161. Mr Henderson forwarded that email to Ms Alvis and Mrs James and asked them what to do next. The following day, Mr Henderson emailed the Claimant as follows [313]:

> "I have spoken with the HR expert regarding your case and they have requested the following:
>
> You need to state that you are going to withdraw your grievance by using the wording "I am withdrawing my grievance of (date) as I am satisfied with the outcome of actioning my transfer."
>
> Please, just confirm this on your email, so that we can start the process of making your transfer permanent.
>
> NB: Regarding your utilities they have also stated that there is no reason that you can't back date a claim and send it to your new manager.
>
> They also agreed that the amount of £6.00 per week was in line with the guidance.
>
> I can and will confirm your circumstances with Robert if necessary.
>
> If you have any further queries regarding your utilities, please send them to me as a separate concern."

162. There were then further emails exchanged between the Claimant and Mr Henderson, culminating in Mr Henderson emailing the Claimant as follows:

> "I am now being put under pressure to get an answer regarding whether you are going to state that you have withdrawn your grievance so that we can start the process of making your transfer permanent – This needs to come in writing with no other questions around it.
>
> Just the statement, please. If this is not done it is assumed that you want to carry on and you would need to submit this on the correct form which I have forwarded to you along with the guidance.
>
> Hopefully, this should answer your question around retention on your personal file.
>
> This guidance is available for all HMRC colleagues to view-there is a grievance section.
>
> […]

We really need to sort this today if possible.

I'm busy on Teams today, but if you can suggest a time for a call, I'll see what I can arrange and get back to you."

163. There was as further discussion between the Claimant and Mr Henderson. Following that, on 26 November 2020 the Claimant emailed Mr Henderson as follows [321]:

"As discussed yesterday on Team call I understand my transfer will not be made permanent until my grievance is withdrawn.
However I will not be able to withdraw my formal grievance until I get a written outcome of the investigation/ audit made on my utilities claims and also until all the points mentioned within my email to you dated 24 November 2020 are covered."

164. Mr Henderson's evidence was that it was the Claimant who said to him that she would only withdraw her grievance if her transfer to Canary Wharf was made permanent, and that that was not suggested by him. His evidence was that he was acting as a go-between, as he did not have the authority to make decisions about a transfer, and that he was relaying information from the Claimant to HR and his managers, then back again. His evidence was also that he was under pressure from HR to get clarity about the transfer.

165. Mrs James' evidence was that her only involvement in the question of whether the Claimant would be transferred to Stratford was when she was called to a meeting with Jim Morgan, Dennis Gregory and Hugh Henderson, and that she was told at that meeting that the Claimant was being transferred to Stratford. She denied that she had had any other conversation with Mr Henderson, or anyone else, about the transfer. She was unable to explain the reference in Mr Henderson's email of 23 November 2020 to a conversation between them.

166. The Grade 6 manger, referred to in Mr Henderson's email, was two rungs above Mr Gregory (that is, it was his line manager's line manager). Mr Gregory's evidence was that he would have expected a decision which needed to be passed to the Grade 6 manager to have gone through him (rather than bypassing him). When he was taken to Mr Henderson's email of 23 November 2020, he accepted that the email appeared to make a permanent transfer reliant on the withdrawal of the grievance, which in his evidence it never would be. His evidence was that the email "didn't make any sense".

167. We find that the Claimant was asked to withdraw her grievance if she wanted her transfer to be made permanent. That is the inescapable meaning of the emails we have set out above. The Claimant's evidence was that this violated her dignity, because she felt her dignity had been violated

by the matters she was complaining about, and having to withdraw her grievance would mean that her dignity would carry on being violated [LOI 2.2.1.1], [LOI 2.2.1.2], [LOI 2.3.1.11]

168. The Claimant's transfer had, in any event, taken effect from 23 November 2020, albeit on a temporary basis. She was line managed by Robert John. Mr Henderson did not pass on to Mr John that the Claimant did not want her birthday to be marked.

169. Hugh Henderson's team had a team chatroom within MS Teams. Uzzal Alam acted as administrator for the Teams chat, meaning that he would keep the members up to date.

170. On 26 November 2020, Mr Alam removed the Claimant from the chat. His evidence was that this was because the team had been informed by Mr Henderson that the Claimant had transferred to Canary Wharf.

171. On the same day, the Claimant emailed Mr Henderson as follows [329]:

> "Good evening Hugh, As we stand I understand my transfer could not be permanent.
> Uzzal therefore should not take it on him to remove me from the Team chatroom as I wanted to do it myself once I received confirmation my move is permanent.
> Are you the one who asked him to do this please?"

172. Mr Henderson sought HR advice. The HR advice he received was "You don't need to respond to her", followed by a smiley face emoticon. Mr Henderson replied "Thank goodness for that!" followed again by a smiley face emoticon. Mr Henderson's oral evidence was that the reason he said that was because he felt like a go-between, and he felt that the Claimant should be getting responses more quickly rather than having to be passed through him, so he was relieved that he did not have to become involved.

173. Mr Henderson did not respond to the Claimant's email. [LOI 2.2.1.3] [LOI 2.3.2.14]

174. On 10 December 2020, a new starter called Noor Ed-Deen Fatemamode transferred a call to the Claimant. He told the Claimant he had been told to transfer the call by Uzma, his floor walker. A floor walker is an experienced member of staff who assists less experienced colleagues.

175. The Claimant contacted Uzma, who told her that she had been off sick on the day in question. The Claimant then assumed that it must have been Mr Alam (because his first name, Uzzal, sounds similar to Uzam). The Claimant raised this with Mr John. He emailed Mr Henderson to ask him to find out who had instructed Mr Fatemamode to transfer the call [952]. In that

email, he gave Mr Fatemamode's full name. Mr John had to chase Mr Henderson for a response. Mr Henderson then responded as follows:

> "Deen (as he was known) has actually left HMRC which is why I wasn't able to get an answer on this".

176. Mr Henderson accepted in evidence that the "Deen" he referred to who was not Mr Fatemamode, but was someone else also called Noor Ed-Deen.

177. Mr Alam's evidence was that he did now know who Mr Fatemamode is, and never instructed anyone to transfer calls to the Claimant. His evidence was that at that time he had never been a floor walker (although he has been since).

178. We accept Mr Alam's evidence in that regard. The Claimant had no first-hand knowledge of why Mr Fatemamode sought to transfer the call to her. She made an assumption that it was Mr Alam, but there was no basis for that assumption. We consider it is inherently more likely that Mr Fatemamode had misremembered or misreported the name of his floor-walker than that he had taken an instruction from Mr Alam (who was not a floor-walker at the time). [LOI 2.2.1.4, LOI 2.3.2.15]

179. Mel Lloyd was appointed to hear the Claimant's grievance. Mrs Lloyd was the Site Lead for the Debt Recovery Team in Maidstone. On 14 December 2020, she emailed Mr Henderson, Mr Gregory and Mrs James to ask them for any evidence they held related to the Claimant's grievance [333].

180. Also on 14 December 2020, the Claimant emailed Mrs Lloyd an updated grievance, including events which had occurred after she submitted her formal grievance [342].

181. On 15 December 2020, Mrs Lloyd forwarded the email to Stacey Alvis of HR. Within that email, she said this: [871]

> "My intention is to respond to the email explaining Kani cannot add to her grievance and would need to raise an additional concern. To avoid a prolonged or second process, I will explain we will be grouping her concerns together in accordance with the guidance so it might be that some of the additional information is shared then."

182. Ms Alvis responded. Regarding the additional points, she said this:

> "Yes I fully agree, if she believes there are current issues arising she would need to raise them with her line manager."

183. Ms Lloyd then emailed the Claimant the same day. Regarding the updated grievance, she said this: [331]

> "Once the formal process for a grievance has started, we cannot add additional events to it. You would usually need to raise a second grievance. What I suggest is when we are looking at the guidance and grouping incidents together, you might be able to bring in some additional information, which would avoid a second concerns process?"

184. On 16 December 2020, the Claimant emailed Mr John as follows (the subject line of the email was "hacked inbox") [338]

> "Hi Robert, Echoing my suspicion, please find attached confirmation of my meeting with the decision manager , meeting I just accepted this morning and the confirmation has been deleted, moved to my deleted items.
> Many emails related to my grievance have been removed from my inbox.
>
> Something is not right."

185. She attached a screenshot from her deleted items box, showing the meeting invitation there.

186. The Claimant also emailed Mrs Lloyd saying this [341]:

> "Good afternoon,
>
> I am not sure you received the last email I sent you yesterday, it is no longer in my sent inbox and confirmation of our meeting on Monday has been somehow deleted I was surprised to find it on my deleted items. Something is terribly wrong, many of the emails supporting my grievance are going missing including the one sent to D.G on 05/10/2020 after this humiliating celebration meeting whereby he admit to a so call I.T glitch which " preventing" him to display my certificate like previous agent before and after me.
>
> This is unlawful to delete Official sensitive emails right at the moment when you start your investigation.. so convenient.
> I hope they will all be retrieved or I will take it further to the ICO. "

187. Mrs Lloyd responded the next day, as follows: [341]

> "I have attached a copy of the email I received from you yesterday. I can confirm I received the acceptance notification from you to attend the meeting and it appears to be showing in your calendar? It shows as "busy" when I look at your calendar but I assume it's our meeting?

As I explained, if you think your SP and emails are being tampered with, you need to take this up as a security incident with your line manager.

Shall one of us ask DG to see if he has a copy of the email? Let me know which you would prefer?

I have asked for management information from HH, WJ and DG. I forward all information provided by you and your management team to a secure sharepoint folder. You will be given copies of any information I use to investigate your grievance. I will explain more at our meeting on Monday."

188. The reference to "SP" was to the Claimant's laptop. The Claimant did complete a Security Incident Report. Mr John also followed up on her behalf by emailing the Security and Information Team and asking if there was anything else that could be done. The response he received was that he had done all he could do [874].

189. The Claimant's evidence was that she was aware of items going missing from her email inbox. Her evidence was that it was not just emails relating to her grievance, and that there were other emails being deleted as well. Her evidence was that she was focusing on the evidence related to her grievance.

190. The Claimant accepted in evidence that she had been told by the IT team that this sometimes happened because of IT updates, and that also because items may have been set up to be deleted automatically because of storage capacity. She accepted in evidence that the IT department may have been telling the truth when they gave her that explanation. [LOI 4.2.1.4, LOI 2.3.2.16]

191. Mrs Lloyd met the Claimant on 21 December 2020 to discuss her grievance [348]. Following the meeting, the Claimant sent Mrs Lloyd a copy of the notes of the meeting with Wendy James and Uzzal Alam in December 2019 [346]. The Claimant then emailed Mrs Lloyd asking to add to her grievance two occasions went she alleged that Wendy James had made mention of her wearing a headscarf [345].

192. Mrs Lloyd emailed the Claimant on 29 December 2020. Regarding the two additional occasions the Claimant wanted to add, she said this:

"I have noted your 2 additional occasions, but I cannot add them to your grievance or include them in my deliberations. You would need to raise a separate grievance with the dates these incidents happened and detailing what attempts have been made to resolve them informally."

193. Mrs Lloyd's evidence was that she was not suppressing the Claimant's right to complain, but that she wanted to follow the process. Her oral evidence in response to questions from the panel was that that was the advice she received from HR, and that she was following the guidance she received. In the course of re-examination, she said that she had done what HR were telling her [LOI 2.2.1.5, LOI 2.3.2.17]

194. The Claimant raised a second grievance on 5 January 2021. The Respondent accepted that this was a protected act [355], [LOI 2.3.1.12].

195. Ketan Tanna was appointed to hear the Claimant's grievance appeal if required.

196. On 25 January 2021, Mrs Lloyd concluded her grievance investigation and produced a Decision Outcome. She did not uphold the Claimant's grievance, save for the allegations about Mr Alam. [367]

197. The Claimant's case is that the failure to uphold her grievance was an act of harassment and discrimination. She put to Mrs Lloyd in cross-examination that the witnesses interviewed as part of the grievance barely denied her allegations. She referred in particular Sue Huggett, who she had alleged had had an inappropriate conversation about Brexit with another colleague, Clement Michael. The relevant part of the Claimant's grievance said this:

> "Sometime later around 2nd February 2020, Clement Michael I think his name is came to sit in our "Village" and he helped me on a case I was struggling with. And then he shows me a picture he took with Boris Johnson few years ago when he came to visit Croydon and then the discussion with Susan Huggett slip in to politics. Clement said he was for the Tories party and he was supporting Brexit then Sue just got involved in the discussion she was very passionate upset and got carried away complaining strongly about foreigners being all over the place and specially EU citizen taking all jobs away from British people, she went on saying that as a result her own son he still living at home unable to get a job or a mortgage… I felt targeted and was so uncomfortable and shocked. I then understand that all this hostility was politically filled, I felt very bad as I use to get along very well with Sue because like herself, I like knowing about historical events, talking about books I am reading and historical events, British history. I was disappointed of her for having such a hateful speech knowing I am from the EU/ French. I discovered another face of her that she never showed me until Clement "pressed the button"." [287]

198. The evidence Mrs Lloyd had gathered from Mrs Huggett was in the form of an email dated 13 January 2021 which, insofar as relevant to the Brexit allegation, said this [1027]:

> "As for a conversation I may have had in February I don't remember that either and if I had I would not have been rude or insulting. Why have I only just had this email about it, nearly a year later. I can just about remember what I had for breakfast."

199. The way Mrs Lloyd had captured that in her grievance outcome was as follows [375]:

> "You advise in February 2020, Clement and Sue were having an inappropriate conversation within your hearing around Brexit. You haven't provided any information to suggest how you followed this up until it is recorded in your grievance dated 28 September 2020.
> Sue has said she has no recollection of the conversation 11 months after the event."

200. Then a little later:

> "I can see from the language used in the grievance the impact this conversation between Clement and Sue had on you, but I am unable to corroborate or make a decision this amounted to racial harassment.
>
> I am unable to uphold these parts of you complaint."

201. Mrs Lloyd's oral evidence was that if Ms Huggett couldn't recall the incident, she could not rule on it. [LOI 2.2.1.6, LOI 4.2.2.2]

202. The Claimant appealed Mrs Lloyd's grievance outcome. On 27 January 2021, Mr Tanna emailed the Claimant to ask her to clarify her appeal [396]. The Claimant did so on 28 January 2021 [400].

203. On 1 February 2021, the Claimant sent further evidence to Mr Tanna [405]. The Claimant asked if her solicitor could accompany her to the appeal meeting [424]. Mr Tanna responded asking the Claimant not to send him any further information in advance of the appeal hearing. He additionally explained that the Claimant could not be accompanied by a Solicitor but could be accompanied by a co-worker or Trade Union representative. [425]. Notwithstanding Mr Tanna's email, the Claimant did send further evidence [433].

204. The Claimant asked for an interpreter to be present at the appeal hearing. Mr Tanna responded on 5 February 2021. He noted that an interpreter had not been present at the original grievance hearing, and suggested that the Claimant could use her companion to interpret if necessary [445].

205. The appeal hearing had been scheduled for 16 February 2021 at 10am. At 09:46 that morning, the Claimant emailed Mr Tanna to say that she would not be able to attend the appeal hearing because an interpret would not be present [449].

206. Mr Tanna responded on 17 February 2021. He explained that an interpreter was not a reasonable adjustment and would not be provided. He indicated that he would postpone the appeal, but would not postpone it again [455].

207. There was then further correspondence between the Claimant and Mr Tanna. Mr Tanna continued to refuse the request for an interpreter. The Claimant asked if the meeting could be recorded. Mr Tanna agreed that the appeal meeting would be recorded. [482]

208. Mr Tanna's evidence was that it was not appropriate for the Respondent to provide an interpreter as the Claimant had excellent communication skills and worked for the Respondent in a telephone-based role. [LOI 2.3.2.20]

209. Mr Tanna also informed the Claimant that he would be hearing the Claimant's second grievance (about the comments allegedly made by Mrs James) alongside her appeal.

210. On 23 February 2021, Mrs Lloyd emailed the Claimant and others to explain that she had made an error in her grievance outcome [479]. In the grievance outcome, Mrs Lloyd said this:

> "I have seen an email exchange between yourself and Dennis around a transfer to Canary Wharf." [369]

211. Mrs Lloyd's evidence was that what it ought to have said was that she had seen an email between Mr Gregory and the Claimant about training (rather than about a transfer to Canary Wharf). The issue came to light because the Claimant had made a Subject Access Request, which led Mrs Lloyd to look again at her grievance outcome. On her evidence, that was when she noticed the error. [LOI 2.2.1.7, LOI 2.3.2.18]

212. The Claimant followed the matter up by emailing Mr John about whether emails had been missing from the SharePoint folder, as she could not locate an email exchange with Mr Gregory regarding training [501]. Mrs Lloyd responded as follows:

> "I've had no real involvement with the SARS request but can see the point Kani is making. Some of the documents in the one drive folder have attachments e.g. information supplied and attached. These

attachments (I suspect due to how one drive has stored them) haven't/cannot be printed.

When I made the decision, I would have used information contained in these attachments. I think the easiest solution would be for Kani to give you the portfolio numbers and details of the date, time and colleague they were sent from. It may then be necessary to ask the colleague to resent the email so the attachments can be printed. Once I had made my decision and moved the documents to the one drive folder I deleted them. I may have something in my sent items so if Kani wants to copy me into the response I can look and see if I can help. I have looked for the email shown below from Dennis Gregory sent on the 15 December and you will need to go back to Dennis and ask him to resend it with the attachments."

213. Mrs Lloyd's evidence to the Tribunal was in broadly the same terms. We accept Mrs Lloyd's explanation of what she had done – that is, that once she had written up the grievance outcome, she saved the emails to OneDrive and deleted them from her inbox. [LOI 2.2.1.8, LOI 2.3.2.19]

214. The Claimant's appeal meeting took place on 4 March 2021. The appeal meeting lasted over three and a half hours, with a lunch break.

215. There was in evidence before us notes of the meeting taken by the notetaker. There was also a transcript of the second part of the appeal meeting. The recording of the other part had apparently been lost or could not be recovered. The transcript was an automatically generated one. It was not a particularly helpful document, as it did not say who was speaking at any point.

216. Mr Tanna's evidence was that the exercise he was conducting as appeal officer was a review of the Claimant's grievance outcome, rather than a complete re-hearing of her grievance. [LOI 2.3.2.21]

217. During the appeal hearing, the Claimant's case was that Mr Tanna suggested that Mrs James may have made comments on the Claimant's headscarf and appearance to "bond" with her. Within the partial transcript that was before us, word used by Mr Tanna was "connecting" rather than "bonding". Having listened to that part of the recording, the Claimant confirmed she agreed that that was the word used on that occasion. The Claimant then suggested that he may have used the word "bond" or "bonding" in the first part of the meeting (in respect of which the recording was lost). We consider that, in the context of the allegation the Claimant makes within these proceedings, there is no functional difference between the words "bond" and "connect". So we do not need to make a positive finding on whether the word "bond" was used at another point during the meeting. [LOI 2.2.1.9]

218. Mr Tanna gave the Claimant a deadline of 5 March 2021 to provide any further documents regarding her appeal. On that day, the Claimant provided Mr Tanna with 36 further documents. The Claimant suffered from a network connectivity issue while she was doing so. Her case was that the loss of internet connectivity was an act of harassment. When the Claimant was asked in cross-examination if it was deliberate, her evidence was that it could have been, because of the recurrence of technical issues. She was not able to suggest who may have caused the connectivity issue to occur. [LOI 3.2.1.3].

219. In the process of investigating the Claimant's appeal (and second grievance), Mr Tanna met Mrs James [539]. During that meeting, Mr Tanna discussed the allegations with Mrs James. Mrs James denied that she referred to the Claimant as "beautiful and curved", although she agreed that she had called the Claimant a "beautiful black woman". She told Mr Tanna that she had described the Claimant's voice as "sexy" to her, although she regretted saying that. She also referred to the comments she had made about the Claimant's headscarf. [LOI 3.2.1.1]

220. On 23 March 2021, Mr Tanna provided the Claimant with his decision regarding her appeal and her second grievance [545]. He did not uphold either the appeal or the second grievance. He noted that his decision was final. There was no further right of appeal. [553].

221. The effect of that was that, in respect of her second grievance, the Claimant had no right of appeal. Mr Tanna was hearing that part of the grievance at the first formal stage (as the Claimant had not been allowed to add the allegations to her original grievance). When Mr Tanna was asked about it during his evidence, he accepted that that was the effect of his decision. His evidence was that it had not occurred to him at the time, and that it was a complex case. We accept that it was an unintentional oversight on his part. It did, however, have the result that the Claimant had no opportunity to appeal Mr Tanna's findings on her second grievance.

222. In March 2021, the Claimant was invited to take part in P87 training. The Claimant was apparently not given the correct permissions, which meant that she could not access all of the documents relevant to the training.

223. Mr John emailed various people on 31 March 2021 to try to resolve the matter for the Claimant [562, 563]. The Claimant emailed Mr John on 1 April 2021 at 9:44am to confirm that she then had full access to the relevant Learning Library.

224. Further document access issues did then occur on 7 April 2021, although on 8 April 2021 the Claimant emailed Mr John to tell him that she had been able to complete the training [571].

225. Mrs Lloyd’s evidence was that she may have sent correspondence about the P87 training to colleagues, but that the candidates for the training were selected by the central support team rather than by her. We accept her evidence in that regard. [LOI 3.2.1.6].

226. During the Claimant’s time assigned to the Canary Wharf office, that office closed down. The teams based there were centralised at the Stratford Regional Centre. The Claimant was still working from home at that time. She remained assigned to Mr John’s team in Stratford (still on a temporary basis).

227. Towards the end of her six month assignment, the Claimant and Mr John had some discussions regarding making the change permanent. Mr John emailed the Claimant on 6 April 2021 as follows:

> “Further to our earlier discussion regarding a transfer to Stratford Regional Centre.
>
> If you were to transfer to Stratford Regional Centre, you would be responsible for any additional costs.
>
> Please let me know whether you would like me to proceed with the option to making a transfer to Stratford Regional Centre permanent on this basis.
>
> Please let me know If you would like any further clarification, have any concerns or questions regarding a transfer, or if you wish to remain in Croydon Regional Centre.”

228. On 27 April 2021, Mr John then emailed a letter to the Claimant which said this [578]:

> “Following completion of the investigations into concerns you raised in respect of colleagues in Croydon DM, and the conclusion not to uphold your concerns, you should now confirm your preference to:
>
> 1. Return to Croydon Debt Management, or
> 2. Remain with Stratford Debt Management. As notified previously, any costs of the move to Stratford would need to be met by yourself.
>
> These are the two options available for you to consider.
>
> Please respond to me by 04/05/2021 so that the necessary arrangements to support you can be made.”

229. The Claimant responded on the same day that neither option was acceptable to her [577]. She said that she could not return to Croydon because she had safety and wellbeing concerns, but she could not meet

the cost of remaining with the Stratford Debt Management team. She asked to either remain in Croydon but in a different team, or transfer to another building without having to pay additional cost.

230. On 10 May 2021, Mr Gregory emailed the Claimant a letter setting out the same two choices. He noted that the Claimant had not yet chosen either of those choices. He indicated that he wanted to make any changes permanent from 1 June 2021 [579].

231. The Claimant responded asking for one month's unpaid leave. Mr Gregory indicated that he could not deal with any leave request until the Claimant had responded to his email [582].

232. Some further emails were exchanged. On 25 May 2021 Mr Gregory emailed the Claimant to explain that, in the absence of a response from the two options, she would return to Croydon Debt Enforcement with effect from 1 June 2021. He explained that her line manger would be Sarah Noble [585]. [LOI 3.2.1.7]

233. Sarah Noble's team focused on large debt collection work (that is, collecting debts of over £100,000). There were two teams in Croydon that did that work. The team leader of the other such team in Croydon was Sarah Young. Mrs Young was Mrs Noble's buddy manager. Both Mrs Young and Mrs Noble reported to Graham Brazier. There was another large debt team in Glasgow. There was a weekly meeting of the large debt teams, chaired by Mr Brazier. Because the meeting involved staff in Glasgow as well as Croydon, it took place by video.

234. On 28 May 2021, Mrs Noble emailed the Claimant to introduce herself and welcome her to the team. She set out what she understood to be the position in respect of the Claimant's training, as follows:

> "As I confirmed there are other colleagues that are also new to this area of work, so there will be lots of support available.
>
> I have today emailed the Learning & Development team requesting CT & VAT training.
> I note from Robert John's email that you have attended a PAYE overview by Tax Academy but would need consolidation/buddying on any cases initially."

235. The Claimant replied as follows:

> "Just for clarification Robert John email to you quote "Kani had a brief overview of PAYE from Tax Academy, in preparation for this becoming a second HOD but that is all the training on PAYE so far. If Kani were to be considered for PAYE she would need the appropriate training/shadowing/buddying."

As I told you yesterday my PAYE knowledge are very basics. I would need the appropriate training to do the job please before getting to any buddy or shadowing ?"

236. Mrs Young sent the Claimant an invitation to the Large Debt meeting to take place on 4 June 2021. On 1 June 2021, the Claimant rejected that invitation [587]. On 14 June 2021, the Claimant declined an ongoing invitation to attend all Large Debt meetings.

237. The Claimant's evidence was that Mr Brazier then emailed the Claimant about her non-attendance. Her evidence was that the email sought to coerce her to attend the meetings, and she felt humiliated by it.

238. Mr Brazier's evidence, in his witness statement, was as follows;

"14. I note that the Claimant refers to me having sent her an email on the 14th of June about attending meetings. I cannot locate this email in the bundle. I'm not sure why I would have been emailing the Claimant about her attendance at team meetings as that would have been a matter for her immediate line manager, Sarah. It does however seem quite possible that I would have sent the Claimant a polite and reasonable email about attending the large debt meetings as they were important for anyone doing that type of work for the reasons set out above.

15. I don't accept that my interactions with the Claimant amounted to unwanted conduct related to her race or disability. I also don't accept that my interactions with the Claimant had the effect of violating the Claimant's dignity or creating an unpleasant environment for her. I'm surprised that the Claimant has not produced the email of the 14th of June if she is so upset about its contents."

239. No email of 14 June 2021 from Mr Brazier to the Claimant was in evidence before us. Mr Brazier's email files were deleted when he retired from the Respondent. Mr Brazier retired on 31 December 2022. It was not suggested to us that the Respondent had made any effort to preserve relevant emails from Mr Brazier's inbox.

240. The Respondent would have been under a duty to disclose the email (if it existed), The list of issues was dated 18 August 2022, and it made specific reference to an email from Mr Brazier on 14 June 2021 which was said to constitute harassment. It would therefore have been eminently clear to the Respondent that the email was going to be in issue (and disclosable) some three and a half months before Mr Brazier retired.

241. Mr Brazier confirmed at the start of his evidence that his witness statement was prepared with the assistance of the Respondent's solicitors. In the circumstances, we considered that the wording he used ("I cannot

locate this email in the bundle") was surprising. The Respondent must have known that if such an email existed, the reason it was not in the bundle was because they had not preserved and disclosed it. In the circumstances, we considered the tone of Mr Brazier's statement to be (deliberately) deflectionary.

242. We find that the email was sent. Mr Brazier did not deny sending such an email, and the Claimant's email regarding it was clear and consistent. [LOI 3.2.1.10]

243. The Claimant asked to move away from her area of work due to a decline in her mental health. The Claimant's evidence was that this happened on 6 June and 7 June. The Respondent accepts that this was a protected disclosure. [LOI 3.3.1.3]

244. Mr Gregory's evidence in his witness statement was that he was not aware of a second request for transfer. The evidence of both Mr Brazier and Mr Gregory was that they tried to find alternative employment for the Claimant in another team in the Croydon office in discussion with an HR colleague, but that there were no available vacancies at the Claimant's grade. [LOI 3.3.2.2, 3.2.1.8]

245. There was no evidence before us of the extent of the searches they carried out. Nor did either Mr Brazier or Mr Gregory set that out in their evidence. Mr Brazier said this:

> "18. I see, at paragraph 3.3.2.2. of the List of Issues that the Claimant thinks that I subjected her to a detriment in rejecting her request to move to a new work area because I knew that she'd lodged a grievance on the 11th of November 2019 and that she'd lodged another grievance in January 2021. This isn't right.
>
> 19. I did know, before the Claimant's return to the Croydon office on the 1st of June 2021, that she had lodged a grievance against colleagues in Croydon. I didn't know exactly who the grievances were against though. In any event, the reason the Claimant couldn't be moved out of the large debt team was that we couldn't find another role for her, she wasn't suggesting where she wanted to go anyway and there was a role for her, with work that needed to done, in Sarah's team which we thought didn't contain anyone 'implicated' in her grievances. I see however from the bundle (page 606) that the Claimant appears to have had an issue with someone called Clement but this was news to Sarah and he wasn't in her team in any event."

246. Mr Gregory said this:

> "18. On 1 June 2021, the Claimant returned to the Croydon Office after her temporary transfer to the Stratford region office had ended.

As part of her return, I moved the Claimant to a new team with a new line manager. This was to help the Claimant to have a fresh start and hopefully avoid the colleagues that she had previously complained about. I recall that on or around 3 June 2021, the Claimant made a request through her line manager to be moved from the Debt Management team to a new area of work. I did not have a new 'area of work' that I could move the Claimant into, but her new team was a new area in the sense that it was the 'Large Debt' team, which was different to the type of work she had been doing before - but it was still Debt work. Debt management is a relatively small business area within the Croydon office, but there are a number of different business areas that operate from there including the Customer Compliance Group (Fraud Investigation Service Valuation Office and the Probation office. However, the HR Business Partner and I did look at other opportunities in other business areas that we could offer to the Claimant, but there was nothing available at her grade at that time."

247. On 24 June 2021, the Claimant was invited to attend a VAT overview, to be led by Clement Michael. She did not attend. That afternoon, Mrs Noble emailed the Claimant to ask if she found the training helpful. The Claimant indicated that she had not attended the training. When asked why, she explained that Mr Michael was involved in part of her grievance. Mrs Noble explained that she was not aware of that, as the Claimant had only told her about two individuals on Mrs Young's team. [LOI 3.2.1.9, LOI 3.2.1.12]

248. On 7 June 2021, the Claimant informed Mrs Noble that she had booked to attend Civil Service Live, a two-day online training event being run across the Civil Service. She had booked attend both days. Mrs Noble responded to inform her that she was only permitted to attend one day. It was agreed that the Claimant would attend some sessions across both days, adding up to one day in total.

249. On the morning of Civil Service Live, Mrs Noble sent the Claimant a Teams message as follows, with a hyperlink to a page entitled "Accessing Civil Service Live Sessions" [644]:

> "Good morning Kani. Just sending you this link I saw in case you have any problems accessing your Civil Service Live sessions today"

250. Mrs Noble's evidence was that she had noticed a message on the HMRC intranet notifying employees that there may be issues which could affect them joining Civil Service Live sessions and providing information on troubleshooting technical difficulties.

251. In the event, the Claimant did have technical difficulties which prevented her from attending the Civil Service Live sessions she had

intended to attend. We find that this was due to a network connectivity problem. [LOI 3.2.1.11]

252. In the interim the Claimant had been referred to Occupational Health. She was seen on 9 June 2021. The report was amended on 25 June 2021. The report noted that the tumour caused her pituitary gland to produce too much of a hormone called prolactin, which can trigger migraines. It noted that she was suffering symptoms of stress, anxiety, migraine, vertigo, loss of weight, poor sleep and low mood. She noted that her hormone levels were raised, which she believed was caused by work stress, and which was likely to trigger headaches and migraines. The report advised that the Equality Act 2010 was likely to apply.

253. On 29 June 2021, the Claimant asked Mrs Noble for help with a case via Teams. The case needed a "CAMDE20" letter. Mrs Noble indicated that she would not be the best person to help, and suggested that the claimant ask for help via the team's Teams chat. The Claimant said "I will just leave it… thanks anyway…". When prompted, the Claimant said this: [646]

> "It's all right don't want to find myself in the position I was before and someone will be rude to me.. that's fine.. no worries"

254. Mrs Noble responded:

> "Kani, no one will be rude to you. If you have been working on the case then you need to finish it. There will be lots of cases coming up that will need a CAMDE20, so you need to know how to do it. Please ask someone on the team to show you".

255. In the event, the Claimant approached Mr John for assistance. She emailed Mrs Noble later that day to explain that the CAMDE20 letter was ready. Mrs Noble reiterated to the Claimant that there were colleagues in the team who could have helped her with it.

256. The Claimant responded as follows [617]:

> "As per previous bad experience, some colleagues in Croydon have not been really helpful in the past, to avoid any further difficult situation for me I came to you for help but you couldn't and you have not assigned me any buddy to help either. Reason why I asked Robert who I know has always been willing to help and very knowledgeable."

257. Mrs Noble replied to the Claimant:

> "As I advised I was not the best help as I have not issued letters on SEES for some time.

> I did give you advice - I advised that there were Team members in, who could support you. I am not aware that our Team members have been unhelpful in any way since you joined our Team on 1/6/21? The team is there to buddy and support you in all aspects of the work.
>
> I have said that when you have completed your HOD training you will be able to buddy/shadow with a colleague to consolidate your learning and build confidence in that particular HOD. However, this was a general query that anyone on the Team could support you with."

258. The Claimant's evidence was that she had been told by Mr John that when she finished the training, a buddy would be appointed. That is consistent with what Mrs Noble told the Claimant. It is also consistent with the Claimant's earlier email to Mrs Noble regarding her training. [LOI 3.2.1.13]

259. With effect from 30 June 2021, the Claimant was absent from work due to sick leave. Mrs Noble was on annual leave that day. The Claimant did not contact Mrs Young (or anyone else at the Respondent) to indicate that she was absent. On 1 July 2021, Mrs Noble therefore contacted the Claimant.

260. On 2 July 2021, the Claimant emailed Mrs Noble to inform her that she was still unwell. She indicated that she would get a doctor's note in the next week if her sickness continued. She asked that further correspondence by kept to the essential, and be conducted by email, as interactions with the Respondent made her emotional. [900]

261. Mrs Noble responded later that date. She asked the Claimant to get in touch by 10.30am on Monday 5 July if she was still unable to return to work. She explained that if that was the case, she would then call the Claimant to see she was doing and offer further support. She provided the Claimant with the details of the Employee Assistance Programme.

262. The Claimant did not make contact with Mrs Noble before 10.30am on 5 July. Mrs Noble attempted to call her, and then sent her a text message [902]. The Claimant then emailed Mrs Noble to say that she was still unwell. Mrs Noble replied, reiterating that the Claimant should contact her by 10.30 in the morning if she was unable to work. She noted that the Claimant would need a doctor's note by 7 July 2021 if she had not returned to work by then [903].

263. The Claimant emailed Mrs Noble again on 6 July 2021 at 10:20am to say that she would continue to be unwell. Mrs Noble responded. She asked the Claimant about how her symptoms were and whether they had started to improve. She also asked the Claimant to forward a picture of her doctor's note when she received it.

264. Later that day, the Claimant emailed Mrs Noble her fit note [905].

265. On 9 July 2021, Mrs Noble emailed the Claimant. She said this: [907]

> "I am just following up on my email reply from Wednesday, as I have not heard from you.
>
> How are you doing? Do you still have the same symptoms, or have they started to improve? Is there anything further that I can support you with?"

266. On 12 July 2021, Mrs Noble emailed the Claimant (on her work email address) regarding the recommendations made in her Occupational Health report.

267. On 14 July 2021, Mrs Noble emailed the Claimant's personal email address. She said this:

> "I have tried to phone your mobile number but there is a recorded messaged advising you are not accepting calls.
>
> I have not heard from you since your email on Tuesday 6/7/21, and I would like to know how you are doing. I have emailed a few times and did advise I would try to call you.
>
> Can you please let me know how you are doing?
> Have your symptoms improved? Are you feeling any better?
>
> I will try to call you again tomorrow as I would like to talk to you, to see how you are.
>
> As always, please do not hesitate to contact me if I can help in any way or offer any further support."

268. On 20 July 2021, Mrs Noble emailed the Claimant asking if she would be returning to work, as her fit note expired on the following day [911]. The Claimant responded on the same day forwarding a further fit note [912].

269. Also on 20 July 2021, the Respondent's HR team wrote to the Claimant informing her that her period of full Occupational Sick Pay would expire on 23 August 2021, and setting out the dates on which half pay and Statutory Sick Pay would end [914].

270. Mrs Noble emailed the Claimant again on 21 July 2021, acknowledging receipt of the fit note. She explained that she was supposed to have had an update pay and asked the Claimant to telephone her to discuss it further.

271. On 23 July 2021, Mrs Noble emailed the Claimant again. She set out the information regarding sick pay. She explained that she was going on leave for three weeks, and that in her absence the Claimant's point of contact with Graham Brazier [917].

272. The Claimant's evidence was that the effect of the repeated contact from the Respondent over that period was to create a hostile environment for her. Her evidence was that stress exacerbated the symptoms of her microprolactinoma (and vice versa). Mrs Noble's evidence was that the Respondent had a duty of care towards the Claimant, and consequently had to get in touch with her to ensure that she was alright. [LOI 3.2.1.14]

273. Mrs Noble sent the Claimant a birthday card on or around her birthday. Her evidence was that she had not been told by any of the Claimant's previous managers that the Claimant did not wish her birthday to be marked. Her evidence was that she always sent birthday cards to her team.

274. On 2 August 2021, Mr Brazier emailed the Claimant regarding her continuing her absence. He asked her if she was feeling better and if there were any adjustments that would assist her to return to work, and also reminded her about the Respondent's employee assistance programme [941].

275. In the interim, on 28 July 2021 the Claimant made a Subject Access Request [638]. In response, she was sent a number of documents by the Respondent. However, on 19 August 2021 she emailed Mr Brazier to say that there appeared to be correspondence from Mr John missing [643]. On 23 August 2021, she emailed the Respondent to say that there were documents missing from Mrs Noble and Mr Watson.

276. The missing documents were subsequently provided to the Claimant [921, 929]. [LOI 4.2.2.3]

277. The Claimant remained absent from work. Her case is that on 24 November 2021, Mr Brazier wrote to her to tell her that he wanted to refer her again to Occupational Health, and also to take formal steps regarding her sickness absence.

278. Mr Brazier's evidence was that he could not recall what the letter said, but that it would have been "right and fair" to warn the Claimant that she was at risk of attendance management action in light of the effect her absence was having on the team. His evidence was that he would have been complying with the Respondent's policies.

279. The Claimant has brought three claims against the Respondent.

280. In respect of the first, the Claimant notified ACAS under the early conciliation process of a potential claim on 17 December 2020. ACAS issued the Early Conciliation Certificate on 8 January 2021. The claim was presented on 16 March 2021.

281. The Claimant notified ACAS of the second claim on 22 July 2021, and the Early Conciliation certificate was issued on 23 July 2021. She notified ACAS again on 5 August 2021, and a further Early Conciliation certificate was issued on the same day. The second claim was presented on 9 August 2021.

282. In respect of the third claim, the Claimant notified ACAS on 4 December 2021, and the Early Conciliation certificate was issued on 12 January 2022. The third claim was presented on 11 February 2022.

Law

283. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee:
    283.1. In the terms of employment;
    283.2. In the provision of opportunities for promotion, training, or other benefits;
    283.3. By dismissing the employee;
    283.4. By subjecting the employee to any other detriment.

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

Protected characteristics

285. Disability, race and sex are all protected characteristics (ss. 6, 9 & 11).

Direct discrimination

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

> "(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

287. The comparison may be to an actual or a hypothetical comparator. In either case, there must be no material difference between the circumstances relating to each case (s.23(1)). That is, the comparator must be in the same position in all material respects save only that he or she is

not a member of the protected class *(Shamoon v Chief Constable of the RUC* [2003] ICR 337).

288. In considering whether a claimant was treated less favourably because of a protected characteristic, the tribunal generally have to look at the "mental processes" of the alleged discriminator (*Nagarajan v London Regional Transport* [1999] IRLR 572). The protected characteristic need not be the only reason for the less favourable treatment. However, the decision in question must be significantly (that is, more than trivially) influence by the protected characteristic.

Discrimination arising from disability

289. The definition of discrimination arising from disability is set out in s.15 of the Equality Act 2010:

> "(1) A person (A) discriminates against a disabled person (B) if—
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

290. "Unfavourable" is not defined in the statute. The EHRC Statutory Code of Practice provides that it means that the disabled person "must have been put at a disadvantage".

291. Guidance for Tribunals on how to approach the test in s.15 was set out by the EAT in *Pnaiser v NHS England* [2016] IRLR 170:

> "(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
>
> (b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least

a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see *Nagarajan v London Regional Transport* [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in *Hall*), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in *Land Registry v Houghton* UKEAT/0149/14 a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34

highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

292. The Respondent does not need to have knowledge that the "something" leading to the unfavourable treatment was a consequence of the claimant's disability (*City of York Council v Grosset* [2018] ICR 1492).

293. The burden of establishing objective justification rests on the Respondent. There is a two-stage test:

293.1. First, the respondent must be pursuing a legitimate aim.
293.2. Secondly, the unfavourable treatment must be a proportionate means of achieving that legitimate aim.

294. The proportionality limb involves assessing whether the treatment was "reasonably necessary" (*Homer v Chief Constable of West Yorkshire Police* [2012] ICR 704)

Harassment

295. Harassment is defined in section 26 of the Equality Act 2010 as follows:

Harassment

(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.

(2)A also harasses B if—

(a)A engages in unwanted conduct of a sexual nature, and

(b)the conduct has the purpose or effect referred to in subsection (1)(b).

(3)A also harasses B if—

(a)A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b)the conduct has the purpose or effect referred to in subsection (1)(b), and

(c)because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

(a)the perception of B;

(b)the other circumstances of the case;

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

(5)The relevant protected characteristics are—

age;
disability;
gender reassignment;
race;
religion or belief;
sex;
sexual orientation.

296. General harassment (s. 26(1)) has three elements:

296.1. Unwanted conduct;

296.2. That has the proscribed purpose or effect; and

296.3. Which relates to the relevant protected characteristic.

297. “Unwanted” is essentially the same as “unwelcome” or “uninvited”. Where conduct is offensive or obviously violates a claimant’s dignity, that will automatically be regarded as unwanted (*Reed and anor v Stedman* [1999] IRLR 299).

298. Comments and behaviour must be looked at in context in order to determine whether they were unwanted (*Evans v Xactly Corporation Ltd* (EAT 0128/18).

299. The test for whether the treatment had the proscribed effect has both a subjective and an objective element. That is, the Tribunal must consider the subject effect the conduct had on the Claimant, and must also consider whether it was objectively reasonable for the conduct to have had that effect.

300. When considering whether treatment had the proscribed effect, the Tribunal must look at the effect of the incidents in the round (*Reed*). Tribunals must not "cheapen the significance" of the meaning of the words used in the statute (*Grant v Land Registry* [2011] ICR 1390).

301. In considering whether conduct is "related to" the relevant protected characteristic, a finding about the motivation of the putative harasser is not the necessary or only possible route to the conclusion that the conduct related to the characteristic in question. However, there must be some feature or features of the factual matrix which leads the Tribunal to the conclusion that the conduct in question is related to the particular characteristic in question (*Tees Esk and Wear Valleys NHS Foundation Trust v Aslam & Heads* (UKEAT/0039/19).

Victimisation

302. Section 27 of the Equality Act 2010 provides as follows:

"27 Victimisation

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

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

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

303. The claimant must have done a protected act (or the employer must believe that the claimant has done, or may do, a protected act).

304. A detriment means being put under a disadvantage. In order to be subjected to a detriment, an employee must reasonably understand that they have been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11). It is not, however, necessary to establish any physical or economic consequence (*Warburton v Chief Constable of Northamptonshire Police* [2022] ICR 925).

305. The test in terms of causation is "reason why", rather than "but for". That requires the Tribunal to consider the alleged victimiser's reasons (whether conscious or subconscious) for acting as he or she did.

306. It is not necessary for the protected act to the main motivation for the detriment, as long as it was a significant factor (*Pathan v South London Islamic Centre* [2014] 5 WLUK 441).

307. Self-evidently, the reason for the conduct must be that the claimant had made a complaint which was a protected act for the purposes of section 27 of the 2010 Act; not merely that a complaint had been made in general terms.

Burden of proof

308. Section 136 of the Equality Act 2010 deals with the burden of proof:

"(2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene that provision"

309. The provision prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which "a reasonable tribunal could properly conclude" on balance of probabilities that there was discrimination. It must, however, be something more than merely

a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33).

310. The burden of proof at that stage is on the Claimant (*Royal Mail Group v Efobi* [2021] UKSC 22). The employer's explanation is disregarded. If the claimant satisfies that initial burden, the burden shifts to the employer at stage two to prove one balance of probabilities that the treatment was in no sense for the prescribed reason.

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

312. The Tribunal may legitimately move straight to the second stage of the process in appropriate cases (see, for example, *Gould v St John's Downshire Hill* [2021] ICR 1).

<u>Jurisdiction</u>

313. The time limit for bringing claims under the Equality Act 2010 is set out in section 123 of the Act:

> "(1) 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.
>
> (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
> (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
> (b) such other period as the employment tribunal thinks just and equitable.
>
> (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.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
> (a) when P does an act inconsistent with doing it, or
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

314. The Tribunal may have regard by analogy to the factors set out in s.33(3) of the Limitation Act 1980, as set out in *British Coal Corporation v Keeble and ors* [1997] IRLR 336, EAT, although the factors are not to be treated as a checklist. Those factors are:

314.1. the length of, and reasons for, the delay;
314.2. the extent to which the cogency of the evidence is likely to be affected by the delay;
314.3. the extent to which the party sued has cooperated with any requests for information;
314.4. the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action; and
314.5. the steps taken by the claimant to obtain appropriate advice once he or she knew of the possibility of taking action.

315. While the reason for the delay is a potentially relevant factor in deciding whether to extend time, there is no requirement for the Tribunal to be satisfied that there is a good reason for the delay. As the Court of Appeal said in *Abertawe Bro Morgannwg ULHB v Morgan* [2018] EWCA Civ 640:

> "There is no justification for reading into s.123 a requirement that the tribunal had to be satisfied that there was a good reason for the delay, let alone that time could not be extended absent an explanation from the employee. Any such reason was a relevant matter to which the tribunal could have regard."

Conclusions

316. Because there are jurisdictional issues which necessitate us to look at each of the three claims separately, we will deal with them in that way in our conclusions (as they were set out in the list of issues). We will deal with each allegation, and express a conclusion on the merits, which in each case is subject to the question of jurisdiction. We will then consider jurisdiction (to the extent necessary) on a claim-by-claim basis.

Claim 1
Harassment related to race and/or religion

317. Within the list of issues, the heading for the section of Claim 1 dealing with harassment was "Harassment related to race (ss. 9, 10 and 26 EA 2010)". Although only the word "race" was used, the reference to section 10 of the 2010 Act is a reference to religion. Both the boxes for "race" and "religion or belief" were ticked on the ET1 for Claim 1. We therefore consider that the list of issues was intended to denote that the claims of harassment were put as being related to race and/or religion.

2.2.1.1 – On 23 November 2020, HR and Mrs James via Mr Henderson, asked the Claimant to withdraw her grievance if she wished for her transfer to the Canary Wharf site to be permanent

318. We have found as fact that this occurred.

319. We consider that it was unwanted conduct. The Claimant had raised a grievance. She wanted her grievance to be investigated and resolved. She was being told that, if she wanted to transfer permanently, she could only do so if she agreed to withdraw her grievance. That is the opposite of what she wanted. It was unwanted.

320. We accept that it had the effect of violating the Claimant's dignity, because it gave the Claimant the stark choice of leaving her allegation of discrimination uninvestigated and unresolved if she wanted her transfer to be permanent. We additionally conclude that it was objectively reasonable for it to have that effect. She was making what were, on the face of it, potentially serious allegations of discrimination. The suggestion appeared to be that the matters had to be brushed under the carpet if the Claimant wished to transfer. The Claimant had raised the allegations in the grievance because she felt she had been discriminated against; she had raised the grievance formally because she was unhappy with the efforts to resolve her concerns informally. We have no difficulty in concluding that being asked to waive her concerns reasonably violated her dignity.

321. We then turn to consider whether the conduct was related to the Claimant's protected characteristic. In that regard, the Claimant was bringing a grievance in which she alleged race discrimination. She was being told she would get what she wanted, a permanent transfer, only if she withdrew that allegation. There is a clear causal link between the Claimant's race and the conduct complained of. We therefore consider that she has shown facts from which, in the absence of an explanation, the Tribunal could find discrimination had occurred (in relation to race, not religion).

322. The burden therefore shifts to the Respondent to show a reason for the treatment which was not related to the Claimant's race.

323. The Respondent has not adduced any evidence to show why the Claimant was asked to withdraw her grievance. Each of the witnesses we heard from denied making the decision. The correspondence came from Mr Henderson, but his evidence was that he was simply the messenger. The contemporaneous emails from Mr Henderson suggested that the decision was taken by Mrs James (with ultimate authority to be provided by the Band 6 manager). Mrs James denied any involvement in the decision. She could not explain why Mr Henderson referred in his email to having had a conversation with her about it. Mr Gregory's evidence was that he would have been expected to be involved in any decision that was going to be escalated by the Band 6, but that he had not been involved.

324. Because no one was willing to take ownership of the decision, no one was able to explain to us why the decision was taken. The Respondent consequently cannot discharge the burden upon it. The obvious inference, in the lack of any explanation, is that it was because the Claimant had complained of race discrimination. The complaint of race discrimination cannot be separated from the Claimant's race.

325. It follows that the allegation is made out (as an allegation of harassment related to race).

2.2.1.2 – On 23 November 2020, Mr Henderson told the Claimant it was not possible to provide a written outcome of the investigation into the Claimant's expenses claim in return for the withdrawal of the Claimant's grievance

326. We find that this did happen, in that when the Claimant asked if she could have a written outcome of Mr Gregory's inquiry into her expenses claim, she was told she could not.

327. We accept that it had the proscribed effect on the Claimant. She was clearly troubled by what she perceived as a stigma hanging over her. We do not, however, consider that it was objectively reasonable for it to have had that effect, because:

   327.1. There had been no formal accusation or formal process (indeed, Mr Gregory's inquiry appeared to be focused more on Mr Henderson, for having signed the claim off, than on the Claimant); and
   327.2. Mr Henderson had made it clear to the Claimant in writing that she could continue to claim the expenses.

328. It follows that the allegation fails.

2.2.1.3 – On 26 November 2020, Mr Henderson authorised Mr Alam to withdraw the Claimant from the Microsoft Teams chat for her substantive role and ignored the Claimant's email asking if Mr Henderson had authorised the withdrawal

329. The allegation has two limbs. In respect of the first limb, we have found as fact that Mr Henderson did not authorise Mr Alam to withdraw the Claimant from the Microsoft Teams chat. Mr Alam did so on his own initiative.

330. It was unwanted conduct, in that the Claimant apparently wanted to stay in the chat for Mr Hendersons' team. She complained about her removal at the time. However, we consider that it could not have had the requisite effect, objectively speaking. The Claimant had been temporarily reassigned to a different team, for at least six months. We conclude that

being removed from the Teams chat for a team she was (effectively) not a member of could not be said to have the proscribed effect.

331. In respect of the second limb, once again it is made out on the facts, in that Mr Henderson did not respond to the Claimant's email. That was unwanted – the Claimant sent the email she did because she wanted a reply. Failing to reply was poor practice. But Mr Henderson was no longer the Claimant's manager, she was no longer assigned to his team (albeit temporarily). In all of the circumstances we do not consider that it was objectively capable of having the proscribed effect.

332. The allegation therefore fails.

2.2.1.4 – On 10 December 2020, Mr Alam instructed Mr Fatemamode to transfer calls to the Claimant in breach of procedure

333. We have found that this did not happen. It follows that the allegation fails.

2.2.1.5 – On 29 December 2020, Ms Lloyd asked the Claimant to bring a separate grievance in respect of allegations that Ms James had made comments about the Claimant's headscarf and the Claimant being "beautiful and curved"

334. We have found as fact that this did happen. It was unwanted, in that what the Claimant wanted was to be able to add the allegations to her existing grievance. Being told to do something else was plainly unwanted.

335. It was not suggested to Mrs Lloyd that her conduct had the proscribed purpose.

336. We consider that it was not objectively capable of having the proscribed effect. Mrs Lloyd was not telling the Claimant that she could not bring a grievance about the alleged comments. She was merely telling her that she would, in effect, have to jump through an additional hoop to have to do so (in that she would have to bring a second grievance). The proscribed effect is violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. Those words are not to be diminished or read lightly. We do not consider that it was objectively reasonable for what Mrs Lloyd did to have the proscribed effect.

337. It follows that the allegation fails.

2.2.1.6 – On 25 January 2021, Mrs Lloyd not upholding the Claimant's grievance, save for allegations in relation to acts carried out by Mr Alam before the meeting on 23 December 2019.

338. This occurred, in that Mrs Lloyd did not uphold the Claimant's grievance (save for the part relating to Mr Alam). We have no difficulty in finding that it was unwanted. The Claimant raised her grievance because she believed it to be true. She intended that it would be upheld.

339. It was not suggested to Mrs Lloyd that her conduct in not upholding the Claimant's grievance had the proscribed purpose. We accept that Mrs Lloyd's action in not upholding the Claimant's grievance did, subjectively, have the proscribed effect on the Claimant. However, we consider that it was not objectively reasonable for it to so, for the following reasons:

  339.1. Mrs Lloyd carried out a reasonable investigation. She gathered evidence from relevant witnesses, and considered that alongside the evidence she had heard from the Claimant. She set out her conclusions in a detailed report.
  339.2. The Claimant focused on the Sue Huggett point in the way she put her case on this allegation. We consider that Mrs Lloyd reached a reasonable conclusion regarding Ms Huggett. She attempted to gather evidence from Ms Huggett. Unsurprisingly, given the passage of time, Ms Huggett was unable to recall the incident. Mrs Lloyd therefore decided that she was unable to reach a firm conclusion on whether the allegation amounted to racial harassment. She did, however, recognise in her outcome the impact the interaction had had on the Claimant.
  339.3. Taken as a whole, neither the outcome itself not the way it was communicated was capable of having the proscribed effect.

340. It follows that the allegation fails.

2.2.1.7 – On 23 February 2021, Ms Lloyd advised the Claimant she had made a mistake on her grievance decision letter

341. We find that the error in the Claimant's grievance outcome was a simply a mistake by Mrs Lloyd. When she realised her error, Mrs Lloyd quite properly corrected it. The Claimant had raised a grievance. In doing so, she expected that she would receive an outcome to that grievance. It must also follow that, if there was an error in the grievance outcome which was noticed after it was sent to the Claimant, she would reasonably have expected to be told about it. So we cannot see how Mrs Lloyd correcting the error in her grievance outcome letter could be said to be unwanted. It was a part of the process the Claimant had chosen to engage with when she raised her grievance.

342. We would in any event have considered that what Mrs Lloyd did, in correcting her grievance outcome, was not objectively capable of having the proscribed effect. The act of correcting her earlier error was entirely unobjectionable.

343. It follows that the allegations fails.

2.2.1.8 – On 24 February 2021, Ms Lloyd advised the Claimant she had deleted evidence in relation to the grievance investigation

344. We have found that what Mrs Lloyd did was to save the emails to OneDrive, and then delete them from her inbox. The allegation that Mrs Lloyd told the Claimant she had deleted the emails has to be seen in that context. They were not being permanently deleted; rather, they were being stored in a different location.

345. We do not consider doing so could be properly characterised as unwanted conduct. It was, bluntly, up to Mrs Lloyd how she chose to organise her files.

346. The issue arose because the Claimant made a Subject Access Request. In the context of responding to a query raised by the Claimant about the documents she had received, Mrs Lloyd explained how she had stored the files she had gathered in considering the Claimant's grievance. Once again, the act of providing that explanation could not be properly characterised as unwanted. The Claimant asked for an explanation about documents she believed were missing; she could not then say that receiving a response was unwanted conduct.

347. We would in any event have concluded, for much the same reasons, that it was not objectively capable of having the proscribed effect.

348. It follows that the allegation fails.

2.2.1.9 – On 4 March 2021, during the Appeal meeting Mr Ketan suggested Ms James may have made comments on the Claimant's headscarf and appearance to 'bond' with her

349. We have found that Mr Tanna used the word "connect". We have found that, in the context of the allegation, there was no substantive difference between the words "bond" and "connect".

350. We do not, however, consider that it could be characterised as unwanted conduct. The Claimant had raised a grievance. Mr Tanna was hearing that grievance (the allegations being discussed were raised in the second grievance). As part of the process of investigating the Claimant's grievance, he would necessarily need to test the Claimant's grievance in order to understand it. We consider that that is what Mr Tanna was doing when he suggested that Ms James may have been trying to bond or connect with the Claimant. Furthermore, we consider that his comment was not so objectively offensive as to be inherently unwanted.

351. The Claimant had raised the grievance; she had asked for it to be investigated. We do not consider that making the suggestion he did to the Claimant as part of that process could properly be considered to be unwanted conduct.

352. We would in any event have found that it was not objectively capable of having the proscribed effect, for substantially the same reasons.

353. It follows that the allegation fails.

Victimisation – Protected Acts

354. The Respondent accepted that items 2.3.1.1, 2.3.1.2, 2.3.1.5, 2.3.1.8, 2.3.1.9, 2.3.1.10 and 2.3.1.12 on the list of issues were all protected acts. We do not need to say any more about them.

2.3.1.3 – In or around January 2020, attempting to raise an informal complaint with Mr Henderson about Mr Alam

355. In respect of 2.3.1.3, we have found as fact that the Claimant told Mr Henderson in general terms about what had happened with Mr Alam. The Respondent accepted, in the context of 2.3.1.1, that that was a protected act. That was plainly an appropriate concession – given the intrinsic connection between the allegation about Mr Alam and the Claimant's race, we cannot see how the Claimant could have descried the situation with Mr Alam without alleging a breach of the Equality Act. It follows then that we conclude that 2.3.1.3 was a protected act.

2.3.1.4 – In or around April 2020, attempting raise an informal complaint with Mr Henderson about Mr Stevenson

356. In respect of 2.3.1.4, the Claimant accepted in evidence that she had not made an allegation of discrimination about Mr Stevenson. Her evidence was, of course, that she was cut off by Mr Henderson before she could do so. We accept her evidence that she was cut off by Mr Henderson. However, we do not find that Mr Henderson cut the Claimant off because he anticipated that she was about to make an allegation of discrimination. We consider that it is much more likely that he cut her off because he wanted to reassure her that she should not worry about the apprenticeship programme, since it had been put on hold due to COVID.

357. We note also that, after being cut off by Mr Henderson, the Claimant did not make the allegation against Mr Stevenson in another way. She did not seek to make the allegation to Mr Henderson again orally; nor did she put it in writing.

358. We therefore conclude that the Claimant did not make an allegation that Mr Stevenson had breached the Equality Act 2010. It follows that 2.3.1.4 was not a protected act.

2.3.1.6 – On 20 August 2020, raising issues in respect of training with Mr Chris Bentil and other members of the training team

359. In respect of 2.3.1.6, the Claimant accepted in evidence that she did not explicitly refer to being discriminated against. She used the word "excluded", but she did not link that to any protected characteristic. We do not consider that describing herself as having been "excluded" from training on its own was enough to imply a breach of the Equality Act 2010. The context was that not all collectors (such as the Claimant) would expect to receive all training. In that context, referring to being "excluded" from training would not necessarily carry an inherent implication of discrimination. Nor was there any suggestion that Mr Bentil, or anyone else in the training team, would have been aware of the other complaints made by the Claimant. We therefore conclude that 2.3.1.6 was not a protected act.

2.3.1.7 – On 1 September 2020, asking Mr Gregory if the Claimant was still part of the team as she felt excluded

360. We reach a similar conclusion in respect of 2.3.1.7. The Claimant referred to feeling "excluded", but she did not indicate why she felt excluded. There was no reference to any of her protected characteristics, either directly or indirectly. There was not even a reference to her previous complaints, such as to suggest that it flowed from them. We therefore conclude that 2.3.1.7 was not a protected act.

2.3.1.11 – On 23 November 2020, refusing to withdraw her grievance when asked by Mr Henderson

361. In respect of 2.3.1.11, the Respondent (correctly) accepted that the grievance itself was a protected act. By refusing to withdraw the grievance, we consider that what the Claimant was doing was reiterating it. Indeed, in the email of 23 November 2020, she asked for reassurance that "the questionable treatment I suffer will not be repeated" – that is a reference to the treatment she complained of in her grievance. The email of 23 November 2020 cannot be read in a vacuum. When taken in that context, we conclude that it was a protected act, in that the Claimant was reiterating the allegations made in her grievance.

<u>Victimisation – Alleged detriments</u>

The reference at the end of each alleged detriment is to the alleged protected act(s) from which it is said to flow.

2.3.2.1 – On 12 December 2019, Mr Alam was allegedly made aware of the Claimant's complaints about him due to being friends with Ms Young [2.3.1.1]

362. In respect of allegation 2.3.2.1, we have found as fact that Mrs Young was not even aware that the Claimant was complaining about Mr Alam. We have found also that Mrs Young did not know who Mr Alam was, beyond a name on a staff list. We therefore conclude that Mrs Young did not make Mr Alam aware of the Claimant's complaint about him. It follows that this allegation is not made out on the facts. The allegation fails.

2.3.2.2 – On 18 December 2019, Ms James allegedly made comments about the Claimant's headscarf and appearance [2.3.1.2]

363. In respect of allegation 2.3.2.2, we have found that Mrs James did comment on the Claimant's headscarf. We have also found that she called her a "beautiful black woman" – that is a comment about her physical appearance.

364. We have found that the comments were not made in the meeting of 18 December 2019, as the Claimant alleged. There was therefore no temporal link between the complaints and Mrs James' comments.

365. We consider that this is an allegation where it is appropriate to go straight to the second stage of considering the Respondent's explanation for the conduct. We have accepted Mrs James' evidence that she was something of a mother figure within the team in Croydon. We also accept her evidence that she used the phrase "beautiful black woman" as a form of affirmation, to boost the Claimant's self-esteem. We accept that that is also why she described the Claimant as having a "sexy accent".

366. Finally, in respect of the comments about the Claimant's headscarf, we accept that she brought it up conversationally, because she was interested (and because her own daughter had taken to tying her hair).

367. Mrs James' evidence was that she regretted making the "sexy accent" comment, as it was unprofessional. She expressed the same regret within the grievance appeal. We agree with Mrs James subsequent assessment of the "sexy accent" comment, and consider it applies also to the other comments which form the subject of this allegation. But while those comments were certainly ill-judged, we are satisfied that they were not made because the Claimant had complained of discrimination by Mr Alam.

368. It follows that this allegation fails.

2.3.2.3 – On 24 December 2019, the Claimant's colleague allegedly suggesting to Mr Alam that the Claimant was "evil" and that "holy water was needed for the evil" [2.3.1.2]

369. We have found as fact that this did not occur. It follows that the allegation fails.

2.3.2.4 – On 20 January 2020, Mr Henderson telling the Claimant to "let it go" [2.3.1.2 & 2.3.1.3]

370. We have found as fact that Mr Henderson did encourage the Claimant to move on from the complaint she had made about Mr Alam.

371. It is important to consider the context in which the remark was made:

371.1. The Claimant had, only a matter of weeks previously, agreed that the matter was resolved. That was an agreement that had been reached with Mr Henderson's line manager, Mrs James.

371.2. Mr Henderson would consequently have reasonably understood from what the Claimant had told him that the matter had been resolved.

371.3. The interaction was a relatively fleeting one, at a time when the Claimant would have understood that Mr Henderson was particularly busy having just returned from sick leave.

372. In that context, encouraging the Claimant to move on could not, in our judgment, be said to put the Claimant to a disadvantage. If she had wanted to take the matter further, she knew how to do so.

373. Even if we had found that it was a detriment, we would in any event have concluded that it had no connection to the fact that the Claimant had done a protected act. There was no suggestion that Mr Henderson would have acted differently had the Claimant's complaint about Mr Alam had not engaged a protected characteristic. It was nothing to do with the fact that the Claimant had complained about a breach of the Equality Act – rather, it was that Mr Henderson understood that the matter had been resolved.

374. It follows that this allegation fails.

2.3.2.5 – In or around August 2020, Ms James made a further comment about the Claimant's headscarf [2.3.1.2]

375. We have found as fact that this did not happen as alleged. It follows that the allegation fails.

2.3.2.6 – In or around April 2020, Mr Henderson allegedly told the Claimant that the apprenticeship programme was closed when the Claimant tried to raise a complaint about Mr Stevenson in relation to the Claimant's missing registration documents for the Apprenticeship [2.3.1.2 & 2.3.1.4]

376. We have found as fact that Mr Henderson told the Claimant that the apprenticeship programme was on hold. The programme was on hold at the time, due to the impact of the COVID pandemic.

377. We are satisfied that that is why Mr Henderson told the Claimant that the programme was on hold. It was a statement of fact. It was nothing to do with the fact that the Claimant had raised the issue regarding Mr Alam with Mrs James. And we have found that the other alleged protected act relied upon was not a protected act.

378. It follows that the allegation fails.

2.3.2.7 – withdrawn
2.3.2.8 – On 27 July 2020, Mr Henderson allegedly did not provide a response to the Claimant's complaints [2.3.1.5]

379. The Respondent accepted that the complaint was a protected act. We have found as fact that the allegation was made out on the facts, in that Mr Henderson did not provide a response to the complaint of discrimination.

380. We consider that failing to provide a response did constitute a detriment to the Claimant. The Claimant was making a complaint of discrimination. She was entitled to expect that it would be picked up on and responded to. It was not. The remaining parts of her email were responded to; the complaint of discrimination was not. It was ignored.

381. We are satisfied that the Claimant has shown facts from which, in the absence of an explanation, a reasonable Tribunal could conclude that discrimination had occurred. She made a complaint of discrimination. That complaint was, on the face of it, ignored. The other parts of her email were responded to. Absent any explanation, that gives rise to the inference that the reason the complaint was not responded to was because it was a complaint of discrimination.

382. The burden therefore shifts to the Respondent to show a reason for the treatment that was not the fact that the Claimant had alleged a breach of the Equality Act.

383. The Respondent has not adduced any evidence to show why Mr Henderson did not respond to the allegation of discrimination. Mr Henderson made no attempt in his evidence to explain it. There was no evidence before us of any alternative reason why Mr Henderson acted as he did. It follows that the Respondent has not discharged the burden upon it.

384. The allegation is therefore made out, subject to the issue of limitation.

2.3.2.9 – In or around August 2020, the Claimant was allegedly denied training opportunities [2.3.1.5]

385. The Claimant did not suggest, in her evidence, which training she felt she missed out on. We accept that the Claimant would not have been expected to be invited to all training sessions or be trained in all aspects of the Respondent's work. On the evidence before us, we find that the Claimant was not denied training opportunities. The allegation is therefore not made out on the facts.

386. In any event, the protected act relied upon for this allegation was the Claimant's email of 27 July 2020. There was nothing before us to suggest that that email was forwarded to the training team. The part of the Claimant's email which constituted a protected act did not relate to training. There was nothing before us to suggest that any decisions about whether to offer training opportunities to the Claimant were in any way causally linked to the allegation of discrimination made in the email of 27 July 2020.

387. It follows that the allegation fails.

2.3.2.10 – On 28 August 2020, Mr Arunachalam allegedly put the phone down on the Claimant [2.3.1.6]

388. We have found that the alleged protected act relied upon for this allegation was not, in fact, a protected act. The allegation therefore cannot succeed.

389. We would in any event have concluded that what occurred on 28 August 2020 did not constitute a detriment to the Claimant. It was no more than a misunderstanding.

390. It follows that the allegation fails.

2.3.2.11 – On 1 September 2020, Mr Henderson allegedly did not take action to rectify the Claimant feeling excluded [2.3.1.7]

391. We have again found that the alleged protected act relied upon for this allegation was not, in fact, a protected act. The allegation therefore cannot succeed.

392. The allegation is specifically pointed at Mr Henderson. The email was sent to his line manager's line manager. It was not copied to him, and there was no evidence that it was forwarded to him. We could therefore not see, on the evidence before us, why it was said that he ought to have replied to the email. So the way the allegation is formulated, we cannot in any event see how it is made out on the facts.

393. It follows that the allegation fails.

2.3.2.12 – On 5 October 2020, Mr Gregory allegedly deliberately failed to display the Claimant's certificate on screen to congratulate her during a celebration meeting

394. We have found that Mr Gregory did not deliberately fail to show the Claimant's certificate. He was unable to do so because the software crashed. The allegation that he failed to show it deliberately is therefore not made out on the facts.

395. In any event, we are satisfied that the failure to disclose the certificate was unrelated to either of the protected acts relied upon. The reason why Mr Gregory did not show the certificate was because the software crashed.

396. It follows that the allegation fails.

2.3.2.13 – On 15 October 2020, allegedly inaccurate notes were made of the fact finding meeting with Mrs James which were sent to the Claimant on 19 October 2020 [2.3.1.2 & 2.3.1.8]

397. We find that the notes were not inaccurate. They were not verbatim; they were never stated to be verbatim. The Claimant was allowed to make amendments, which she did. But the notes as produced were a broadly accurate reflection of the meeting. The allegation is therefore not made out.

398. For completeness, we should say that we do not consider that keeping non-verbatim notes could be said to constitute a detriment to the Claimant. It is in the Tribunals' experience entirely commonplace for employers to take non-verbatim notes of such meetings.

399. It follows that the allegation fails.

2.3.2.14 – On 26 November 2020, allegedly Mr Henderson instructed Mr Alam to withdraw the Claimant from the Microsoft Teams chat for her team [2.3.1.11]

400. We have found as fact that Mr Henderson did not instruct Mr Alam to remove the Claimant from the Microsoft Teams chat. He did so on his own initiative.

401. In any event, the Claimant had been temporarily reassigned to a different team, based at a different office. She was not going to be a member of Mr Henderson's team for at least the next six months. In the circumstances, we consider that withdrawing her from the team chat of a team of which she was not a member was in no sense a detriment.

402. It follows that the allegation fails.

2.3.2.15 – On 10 December 2020, allegedly Mr Alam instructed Mr Fatemamode to transfer calls to the Claimant [2.3.1.11]

403. For the reasons we have already set out, this allegation is not made out on the facts. It follows that it fails.

2.3.2.16 – On 16 December 2020, allegedly emails in relation to the Claimant's grievance were removed from her inbox [2.3.1.10 & 2.3.1.11]

404. We accept the Claimant's evidence that emails did disappear from her inbox. The Claimant accepted in evidence that the emails that disappeared were not just those related to her grievance. Emails unrelated to her grievance also disappeared. The Claimant also accepted in evidence that the explanations she was given by the Respondent's IT department at the time may have been accurate – that is, that they disappeared either because of IT updates, or because they had been set to be deleted automatically due to limitations on storage capacity.

405. We find that the explanations the Claimant was given at the time for items going missing were accurate. We reach that finding because:

405.1. The Claimant accepted that they may have been accurate.
405.2. They were inherently more probable than the possibility that a bad actor was deliberately removing emails from her inbox.
405.3. They were also consistent with the fact that a range of emails disappeared, not merely those about the Claimant's grievance.

406. We would in any event have found that there was no causal link between the Claimant's grievance and the fact that emails disappeared from her inbox. Once again, that is inconsistent with the fact that a range of emails disappeared, not merely emails relevant to her grievance.

407. It follows that this allegation fails.

2.3.2.17 – On 29 December 2020, Ms Lloyd allegedly asked the Claimant to bring a separate grievance [2.3.1.10 & 2.3.1.11]

408. We have found as fact that this happened. When the Claimant sought to add two allegations to her existing grievance, Mrs Lloyd instead told her she had to bring a separate grievance.

409. We consider that this was a detriment to the Claimant. The Claimant was, in effect, being asked to jump through an extra hoop in order to formally complain about the two matters. And she was being asked to do so in circumstances where:

409.1. The investigation of her existing grievance was at a relatively early stage (Mrs Lloyd had met the Claimant, but had not done very much more than that by way of investigation); and

409.2. The allegations were similar to the existing grievance – it was not the case that she was seeking to raise an entirely different type of complaint.

410. We therefore turn to consider the reason why the Claimant was subjected to the detriment.

411. We find that the Claimant has surmounted the initial burden of showing facts from which, in the absence of explanation, we could find discrimination had occurred. The Claimant's grievance was one of discrimination. When she sought to expand the compass of that grievance, she was asked to jump through an extra hoop. Absent explanation, there is an obvious inference that the Respondent was seeking to make it harder to pursue her grievance (by making her bring a separate grievance in order to pursue the additional allegations, meaning that she would then have two separate grievance processes running in parallel).

412. We then turn to consider the Respondent's explanation. In that regard:

412.1. The Respondent's case was that the decision was taken in order to avoid delaying the existing grievance, and that it was in line with their grievance policy.

412.2. The process was, however, at a relatively early stage, and there was no specific evidence before us about how adding two relatively confined allegations to an already lengthy grievance would delay it.

412.3. Surprisingly, although the Respondent was legally represented throughout, there was no copy of its grievance policy in evidence before us. We were therefore unable to see what the policy said about how such matters ought to be dealt with.

412.4. Mrs Lloyd's oral evidence to the Tribunal sought to suggest that the decision was taken by HR, and that she was simply acting in line with their direction. But that was inconsistent with the contemporaneous emails. The contemporaneous emails showed that earlier in December 2020 Mrs Lloyd had told her HR adviser how she proposed to deal with an earlier attempt by the Claimant to add further allegations. The HR adviser agreed with Mrs Lloyd's approach. That is, we consider very different from HR providing guidance or (as she put it in re-examination) telling her what to do. We consider that, in her oral evidence, Mrs Lloyd sought to distance herself from the decision she had taken by placing it at the feet of HR.

413. Taking all of that into consideration, we are not satisfied that the Respondent's explanation was the real reason why the Claimant was asked to bring a separate grievance. The Respondent has not discharged the burden of showing a non-discriminatory reason for the conduct. We therefore conclude that the Claimant was asked to bring a separate grievance because had raised a complaint of discrimination.

414. It follows that the allegation is made out.

2.3.2.18 – On 23 February 2021, Ms Lloyd advised the Claimant that she had made a mistake on her grievance outcome decision letter [2.3.1.10 & 2.3.1.11]

415. We have found that the error in the Claimant's grievance outcome was a simply a mistake by Mrs Lloyd. When she realised her error, Mrs Lloyd quite properly corrected it. We do not consider that doing so was a detriment to the Claimant. For completeness, neither, in our judgment, was the original mistake capable of constituting a detriment.

416. It follows that the allegation fails.

2.3.2.19 – On 24 February 2021, Ms Lloyd advised she had deleted some emails relating to the grievance [2.3.1.10 & 2.3.1.11]

417. We have found that what Mrs Lloyd did was to save the emails to OneDrive, and then delete them from her inbox. The allegation that Mrs Lloyd told the Claimant she had deleted the emails has to be seen in that context. They were not being permanently deleted; rather, they were being stored in a different location. We do not consider doing so was capable of constituting a detriment to the Claimant. Neither could explaining what she had done constitute a detriment.

418. It follows that the allegation fails.

2.3.2.20 – In or around February 2021, allegedly the Claimant was refused an interpreter [2.3.1.10 & 2.3.1.12]

419. We have found as fact that Mr Tanna refused to provide an interpreter at the grievance appeal hearing. The context of the refusal was that:
    - 419.1. The Claimant was employed by the Respondent to carry out a telephone-based role, where she was required to communicate with taxpayers in English.
    - 419.2. The Claimant had produced a lengthy grievance document, and had engaged in the first stage of the grievance in English.

420. In the circumstances, we do not consider that refusing to provide an interpreter for the Claimant constituted a detriment. Put simply, she did not need an interpreter.

421. In any event, Mr Tanna's evidence was that the reason the Claimant was not provided an interpreter was that he considered that she did not need one. We accept his evidence that that was the reason an interpreter was not provided. On the face of it, that was an apparently reasonable conclusion for Mr Tanna to have reached. The Claimant was employed in a telephone-based, customer-facing role. We accept Mr Tanna's evidence that that was the reason why an interpreter was not provided. It was not because the Claimant had alleged discrimination within her grievances; it was because Mr Tanna believed she did not need one.

422. It follows that the allegation fails.

2.3.2.21 – On 4 March 2021, allegedly the Claimant was not permitted to go through all the evidence she wished at the grievance appeal meeting [2.3.1.10]

423. The Claimant's grievance appeal meeting lasted over three and a half hours. It was, on any account, a lengthy meeting. The Claimant was permitted to submit further documents after the meeting, and she submitted a further 36 documents for Mr Tanna to consider.

424. There was no clear evidence before us about which areas the Claimant was not permitted to fully explore at the appeal hearing. The fact that the Claimant submitted a significant number of documents after the appeal hearing does, on the face of it, suggest that there were matters which she wanted to expand upon.

425. We accept Mr Tanna's evidence that the process he was carrying out, at least as far as the first grievance went, was a review rather than a complete rehearing.

426. To the extent that the Claimant found herself having to provide further evidence after the meeting, we do not consider that constituted a detriment to the Claimant. She was permitted to produce that further evidence, and the appeal meeting had already lasted over three and a half hours.

427. In any event, we accept Mr Tanna's evidence that the reason he approached the meeting in the way that he did was because he was reviewing Mrs Lloyd's decision, not conducting a complete rehearing of the original grievance. It was not because the Claimant had raised allegations of discrimination. We are satisfied that Mr Tanna would have approached any grievance appeal in the same way.

428. It follows that the allegation fails.

<u>Claim 2</u>
<u>Harassment</u>

3.2.1.1 – On 15 March 2021, Ms James allegedly making remarks about the Claimant's headscarf, physical appearance and voice (race – nationality and religion)

429. The reference to remarks made by Mrs James on 15 March 2021 is to remarks that she made in the grievance investigation interview conducted by Mr Tanna. The remarks were not made directly to the Claimant. The Claimant found out about them when she saw the notes of the investigation interview.

430. The reason Mr Tanna was interviewing Mrs James was because the Claimant had raised a grievance about Mrs James. She had alleged that Mrs James had made comments about her. Mr Tanna was interviewing Mrs James to ascertain her evidence. Mrs James was providing her evidence to Mr Tanna regarding the allegations the Claimant had made.

431. In that context, we do not consider that Mrs James' comments in the meeting on 15 March 2021 could properly be characterised as unwanted. The Claimant wanted her grievance to be investigated;' and that would necessarily involve Mr Tanna taking evidence from Mrs James.

432. It follows that the allegation fails.

3.2.1.2 – Around August 2020, Mr Henderson allegedly retrieved the Claimant's date of birth from her HR profile and added it to a list without the Claimant's consent (race – nationality)

433. We have found as fact that this occurred. The conduct was unwanted because the Claimant did not want her birthday to be marked.

434. It was not suggested that, in adding the Claimant to his birthday list, Mr Henderson had the proscribed purpose.

435. We accept the Claimant's evidence that, subjectively, it had that effect for her. However, we do not consider that it was objectively reasonable for it to have the effect, for the following reasons:

435.1. We have accepted Mr Henderson's evidence that it was his normal practice to keep a list of the birthdays of the employees in the team.

435.2. The practice of keeping a list of employees' birthdays so that they can be marked is, in the experience of the Tribunal, not an unusual practice for managers to adopt. Indeed, for many employees being left off such a list would have created a hostile environment. Marking birthdays is not an unusual or inherently offensive practice.

435.3. Mr Henderson did not know that the Claimant did not want her birthday to be marked, because she had not told him. When she did

tell him, he removed her from the list, then stopped the practice altogether. The fact that the Claimant had not previous raised the matter is, we consider, relevant to whether it was objectively reasonable for it to have that effect in the circumstances.

436. It follows that the allegation fails.

3.2.1.3 – On 5 March 2021, the Claimant allegedly suffered from a loss of network connection while submitting evidence to Mr Ketan for her grievance appeal (disability)

437. We conclude that the IT issue the Claimant suffered from on 5 March 2021 was simply a network connectivity issue. It was unfortunate, and the timing was unhelpful from the Claimant (although it was far from the only network connectivity issue from which she suffered). Importantly, however, there was nothing before us to suggest that it was a positive act by the Respondent. Therefore, it cannot have been unwanted conduct, because it was not "conduct" by the Respondent.

438. It follows that the allegation fails.

3.2.1.4 – On 15 October 2020, Ms James allegedly suggested the Claimant should be investigated for misconduct (disability and religion)

439. We have found as fact that Mrs James did suggest that the Claimant should be investigated for misconduct. That suggestion was not made directly to the Claimant. It was made in the report she produced for Mr Gregory. The Claimant did not find out about it until she made a Subject Access Request.

440. We consider that the suggestion was unwanted conduct. Nobody wants to be investigated for misconduct; nor to have their line manager's line manager suggest that such an investigation should take place.

441. The remark must also be seen in context. What Mrs James was suggesting was that the Claimant be subjected to a formal disciplinary investigation for (in effect) raising unwarranted allegations. In the very same sentence of her note, she said that the Claimant should raise her concerns formally so that they could be investigated formally. The Claimant had, of course, not raised a formal grievance at that stage. Mrs James was therefore suggesting that the allegations were unwarranted, at a point when those allegations had never been formally investigated. And in the same breath, she was suggesting that the Claimant ought to raise the allegations formally so that they could be investigated.

442. In that context, we accept that the suggestion created a hostile environment for the Claimant (when she became aware of it). We bear in mind that the Claimant did not find out about it at the time. She did not find

out about it until she received the response to her Subject Access Request. But even after that passage of time, we consider that it was objectively reasonable for the conduct to have created a hostile environment for the Claimant. Her grievance was being written off as not just misconceived or mistaken but unwarranted, such as to attract disciplinary investigation; and that characterisation was being applied to her (prospective) grievance before she had even formally raised it.

443. We then consider whether the treatment is linked to a protected characteristic.

444. Mrs James' evidence to the Tribunal was that she was concerned about the number of allegations the Claimant had made, and that the allegations were baseless. She referred also to the effect the allegations were having on colleagues. We bear in mind that Mrs James' own note indicated that the allegations related to the Claimant's perception (of events). She went on to say that she believed that the Claimant's perceptions were due to a "medical condition". That is a reference to the Claimant's macroprolactinoma (or rather, to Mrs James' understanding of the possible side effects of the medication the Claimant was taking). Mrs James said as much in her meeting with Ms Bradbury on 20 October 2020. She had not discussed the possible side effects of the medication with the Claimant. She had formed that view based on her own research after the Claimant told her about the medications she was taking.

445. We consider that, from what the Claimant had told Mrs James about her condition (taken together with her own research), she had constructive knowledge that the Claimant had a disability within the meaning of the Equality Act 2010.

446. We conclude that the suggestion of disciplinary investigation was therefore inherently linked to the Claimant's disability. It flowed from Mrs James' view that the Claimant's perception of events was inaccurate. That cannot be separated from the assumption she had made about the effect of the Claimant's condition (and the medication she was taking for it).

447. It follows that the allegation is made out as an allegation of harassment related to disability. For completeness, we could see no connection to the Claimant's religion, so the allegation does not succeed as one of harassment related to religion or belief.

3.2.1.5 – On 20 October 2020, Ms James allegedly made an untrue statement about the side effects of the Claimant's medication to undermine the Claimant's grievance (disability and religion)

448. This relates to the comments made by Mrs James in the meeting with Ms Bradbury on 20 October 2020. Once again, these were not seen by the Claimant until she made a Subject Access Request. The Claimant's case is

that she never suffered from the side effects Mrs James referred to. While we are not satisfied that Mrs James' purpose was to undermine the Claimant's grievance, we are satisfied that the sting of the allegation is nonetheless made out. What Mrs James did was to speculate, inaccurately, on the side effects the Claimant's medication had on her.

449. We conclude that this constituted unwanted conduct (albeit that it was not directed towards the Claimant). Mrs James speculated about, and appeared to reach conclusions about, the Claimant's health and the effect it was having on the way she presented at work. She did so on the basis of research she had carried out, and without any discussion with the Claimant. Mrs James is not a medical expert.

450. We accept that the comments had the effect of creating a hostile environment for the Claimant and violating her dignity (when she found out about them). We consider that it was objectively reasonable for it to have had that effect. The Claimant's medical history was a personal matter. Having a manager draw unfounded inferences based on internet research was a clear violation of her dignity.

451. It was plainly also linked to the Claimant's disability.

452. It follows that the allegation is made out as an allegation of harassment related to disability. For completeness, we could again see no connection to the Claimant's religion, so the allegation does not succeed as one of harassment related to religion or belief.

3.2.1.6 – In April 2021, Ms Lloyd added the Claimant to a list of agents to attend P87 training but the Claimant's access rights were restricted meaning she could not take part and she had to complete the training on her own (disability and race – nationality)

453. We have found that was not Mrs Lloyd who added the Claimant to the list of agents to attend the P87 training. We see nothing inherently suspicious in the Claimant being added to the list for training.

454. We find that the Claimant's access rights were not deliberately restricted. While there were a number of IT issues affecting the Claimant, we do not consider that there is anything before us to suggest that it was anything more than the normal type of issues that would be found in a large public sector organisation. In respect of the P87 training, when the Claimant raised the issue with Mr John, he dealt with it promptly, and the matter was fixed by early the next morning.

455. We therefore do not consider that the heart of the allegation is made out on the facts. And in any event, there was no unwanted conduct towards the Claimant.

456. It follows that the allegation fails.

3.2.1.7 – On 1 June 2021, the Claimant was transferred back to the Respondent's Croydon office by Mr Gregory to work with the same colleagues she complained about (race – nationality and disability)

457. We have found as fact that the Claimant was transferred back to the Croydon office. While none of the employees she had raised a grievance about would be in her immediate team, they would be working in neighbouring teams on the same floorplate.

458. We consider that this was unwanted conduct, in that the Claimant was clear that she did not want to return to work in Debt Management at Croydon.

459. We accept that it subjectively had the effect of creating a hostile environment for her. We do not, however, consider that it was objectively reasonable for it to have that effect. The Claimant had only ever been transferred out of the Croydon office for a temporary period, to allow her grievances to be investigated. The Claimant's grievances had been investigated. They had not been upheld. Both the period of time and the rationale underpinning the temporary transfer had come to an end. Her return to Croydon was no more than returning to the status quo. Furthermore, the Claimant was given the opportunity to stay at the Stratford office (albeit that she would have to commute there at her own cost). So in the circumstances, we conclude that it was not objectively reasonable for it to have had the proscribed effect.

460. It follows that the allegation fails.

3.2.1.8 – On 7 June 2021, the Claimant's second request for a transfer was rejected by Mr Gregory (race – nationality and disability)

461. Mr Gregory's evidence was that he was not aware that the Claimant had made a second request for a transfer. The Respondent accepted that the Claimant did request a transfer. Mr Gregory must have been aware in June 2021 that the Claimant was requesting a transfer, as on his own evidence he tried to find alternative employment for her. We consider that he was confused by the word "second".

462. The list of issues suggested that the rejection occurred either on the date of the request or the day after. Neither Mr Gregory nor Mr Brazier specifically took issue with that in their evidence, and neither suggested that there was a longer gap between the request being made and it being rejected. Self-evidently, the request must have been rejected because the Claimant was never transferred away from Mrs Noble's team.

463. We find that Mr Gregory was aware of the transfer request in early June 2021, that request was rejected on or around 7 June 2021, and that it was rejected within around a day of being made.

464. We consider that this was unwanted conduct. The Claimant asked for a transfer; that is what she wanted. What she did not want was for the transfer request to be refused

465. We accept that it had the effect, subjectively, of creating a hostile environment for the Claimant.

466. We turn then to consider whether it was objectively reasonable for it to have had that effect. The context for the Claimant's request was that she was not happy that the grievance process had resolved her complaints, and she did not want to be in the immediate vicinity of the colleagues she had grieved about. She was asking for a transfer. Her transfer was then rejected within a day of it being made. Neither Mr Gregory nor Mr Brazier gave any evidence about the extent of the searches carried out. The overall impression given by both the timing of the rejection and the dearth of evidence regarding the searches was that the response to the Claimant's request was perfunctory. In the circumstances, we consider that the combination of those factors meant that it was objectively reasonable for the rejection to have had the effect of creating a hostile environment.

467. We next consider whether it was related to the Claimant's race.

468. We conclude that the Claimant surmounts the initial burden of showing facts from which, in the absence of a contrary explanation, discrimination could be found. The transfer request, and its refusal, were inherently connected to her grievance. Her grievance complained of race discrimination. She was asking for a transfer because she did not want to have to work alongside colleagues who she had accused of discriminating against her based on her race.

469. We then turn to consider the Respondent's explanation for the refusal of her transfer. The Respondent's explanation for the transfer being refused was that there was no opportunity for her elsewhere. In that regard:

469.1. The Respondent is a large organisation.
469.2. Although we had no direct evidence before us regarding the size of the Croydon office, Mr Gregory's evidence was that there were a number of other teams based in the office, and the Debt Management formed a relatively small part of the office.
469.3. The Claimant was in a relatively junior role, which would have made it easier to redeploy her.
469.4. There was no evidence before us of the extent of the searches carried out. The evidence of both Mr Brazier and Mr Gregory was perfunctory. There was no documentary evidence of searches being

undertaken, or colleagues being contacted to ask about current or upcoming vacancies.

470. If the real reason for rejecting the Claimant's transfer request was that there were simply no opportunities to transfer her, we consider that there would have been evidence of unsuccessful searches. We therefore conclude that the Respondent has not discharged the burden of showing a reason for the transfer which was not related to the Claimant's race. We conclude from that that the refusal was related to the Claimant's race, because it was linked to her grievance.

471. It follows that the allegation is made out as an allegation of harassment related to race. For completeness, we could see no connection to the Claimant's disability, so the allegation does not succeed as one of harassment related to disability.

3.2.1.9 – In June 2021 the Claimant was asked to attend a team meetings and training with Ms Young's team (race and disability)

472. The Claimant confirmed in evidence that this allegation was about the Large Debt team meetings and the VAT training with Clement Michael.

473. In respect of the invitation to the Large Debt meetings, we find that Mrs Young (understandably) did not know anything about the Claimant's grievance. All members of the Large Debt team were required to attend the Large Debt team meetings. It is unsurprising that the Claimant was invited to them.

474. Similarly, we accept that Mrs Noble was unaware that the Claimant had an issue with Mr Michael. Even within the Claimant's grievance her complaint was really about Ms Huggett rather than Mr Michael. But Mrs Noble was in any event unaware of the contents of the Claimant's grievance. So she was unaware that there was even a possibility that the Claimant may have an issue with Mr Michael.

475. In the circumstances, we conclude that neither invitation could properly be described as unwanted conduct. The Claimant was being invited to team meetings, and a training session, which she was required to attend as part of her role.

476. We would in any event have concluded that the conduct was not objectively capable of having the proscribed effect. It was entirely unobjectionable conduct by Mrs Young and Mrs Noble.

477. It follows that the allegation fails.

3.2.1.10 – On 14 June 2021, Mr Brazier allegedly emailed the Claimant about her absence from team meetings and Large Debt meetings (race and disability)

478. We have found as fact that the email was sent (regarding the Large Debt team meetings). We consider that an email from her line manager's line manager would inevitably have a sting which a mere invitation to meetings would not have. In the circumstances, we conclude that it was unwanted conduct.

479. We accept the Claimant's evidence that she found the email humiliating.

480. We have not seen the email. That gives us some difficulty in assessing whether it was objectively reasonable for it to have had that effect. We do, however, bear in mind that the reason we have not seen it is because of a failure on the Respondent's part to retain and disclose it. We consider that the failure to retain and disclose the email was inadvertent rather than deliberate; that is, it was poor practice rather than a deliberate attempt to suppress relevant evidence. That is in keeping with the other issues that arose regarding disclosure.

481. We do, however, consider that it is appropriate to draw inferences about the likely tone of the email from:

481.1. The deflectionary way in which Mr Brazier referred to the missing email in his witness statement; and

481.2. Mr Brazier's surprising outburst from the public gallery on the eighth day of the hearing.

482. Doing the best we can with the evidence available to us, we therefore conclude on balance that it was objectively reasonable for the email to have had the effect of creating a humiliating environment for the Claimant.

483. We next consider whether it was related to the Claimant's race.

484. We conclude that the Claimant surmounts the initial burden of showing facts from which, in the absence of a contrary explanation, discrimination could be found. The reason she had not attended the meetings was connected to her grievance, in which she complained of race discrimination. We bear in mind also that the Respondent had no reason to doubt the Claimant's performance or commitment. So, there was no reason to think she would refuse to attend the meetings without reason.

485. We then turn to consider the Respondent's explanation. Once again, it is somewhat difficult to approach this in a vacuum, without having seen the email. Mr Brazier's evidence regarding the email was expressed in contingent terms. At its highest, his evidence was that it would have been important for anyone doing the Large Debt work to attend the meetings. We are not satisfied that the Respondent has surmounted the burden of

showing a reason which was not related to the Claimant's grievance (and consequently her race).

486. It follows that the allegation is made out as an allegation of harassment related to race. For completeness, once again we could see no connection to the Claimant's disability, so the allegation does not succeed as one of harassment related to disability.

3.2.1.11 – On 16 June 2021, the Claimant was unable to attend Civil Service Live online due to an IT problem (race – nationality and disability)

487. We have found as fact that this did occur.

488. We do not, however, consider that it was unwanted conduct, because it was not something that the Respondent did. It was simply a network connectivity issue. Furthermore, the fact that a message was placed on the intranet suggests that it was an issue that was not limited to the Claimant.

489. We would in any event have concluded that, in the circumstances, suffering from a network connectivity issue on an occasion when network issues were so prevalent as to require a notice to be placed on the intranet, was not objectively capable of having the proscribed effect.

490. It follows that the allegation fails.

3.2.1.12 – On 24 June 2021, Ms Noble allegedly emailed the Claimant asking her to explain why she missed the second part of VAT training (race and disability)

491. Once again, we have found as fact that this did happen.

492. In the circumstances, we consider that it could not be said to be unwanted conduct. The Claimant had not told Ms Noble why she would not be attending the VAT training. In circumstances where she had been invited to the training, and had not told her manager why she did not plan to attend it, she must reasonably have expected to have been asked why she did not do so. We therefore do not consider that it could be unwanted.

493. We would in any event have concluded that it was not objectively capable of having the proscribed effect. Upon being told by the Claimant that she had not attended, Ms Noble made a neutral enquiry regarding why she had not done so. Given that the Claimant had not told Ms Noble in advance that she would not be attending, much less why, we conclude that Ms Noble's enquiry was not objectively capable have having the proscribed effect.

494. It follows that the allegation fails.

3.2.1.13 – On 29 June 2021, Ms Noble allegedly failed to allocate the Claimant a buddy and pressured the Claimant to finish a complex case without appropriate training (race and disability)

495. There are two parts to this allegation. The first is the suggestion that the Claimant was not allocated a buddy. This is correct, as a matter of fact. But as the Claimant acknowledged, a buddy would be appointed when she finished training on a new head of duty. That was not the position that she was in.

496. The second part of the allegation is that Mrs Noble pressured the Claimant to finish a complex case without appropriate training. We do not consider that "pressured" is the correct characterisation of Mrs Noble's email. Ms Noble was simply asking the Claimant to do her job, with support from the team as necessary. Therefore, the allegation is not made out on the facts.

497. We would in any event have concluded that what Mrs Noble said was not capable, objectively speaking, of having the proscribed effect. She was asking the Claimant to do her job, with support from more experienced members of the team as required.

498. It follows that the allegation fails.

3.2.1.14 – From 2 July to 5 August 2021, contacting the Claimant via telephone, email and a birthday card when the Claimant was off work sick when the Claimant was not celebrating her birthday and requested to be removed from the list (race – nationality and disability)

499. The Claimant was absent from work from 30 June 2021. On 2 July 2021 she emailed Mrs Noble. She asked that correspondence by kept to the essential, and be conducted by email, as interactions with the Respondent made her emotional. From then, she was contacted:
    499.1. Once by email later that day.
    499.2. Three times on 5 July 2021 (attempted call, text message, then email)
    499.3. Once on 6 July 2021
    499.4. Once on 9 July 2021
    499.5. Once on 12 July 2021 (to her work email address)
    499.6. Once on 14 July 2021
    499.7. Once on 20 July 2021 (by the Respondent's HR department)
    499.8. Once on 21 July 2021
    499.9. Once on 23 July 2021

500. She was also sent a birthday card by Mrs Noble on or around her birthday (2 August 2021).

501. The Respondent's conduct, in repeatedly contacting the Claimant during the early part of her sickness absence, was unwanted. The Claimant had asked for correspondence to be kept to a minimum, and to be by email only. While she could have been more proactive in reporting her absence, she had clearly explained why she wished for correspondence to be kept to a minimum.

502. The birthday card was also unwanted, in the sense that she had told Mr Henderson that she did not want her birthday to be marked. On Mrs Noble's part, we accept that that was an inadvertent failure, in that Mr Henderson had failed to pass on the message when the Claimant left his team.

503. We consider that the effect of the repeated contact was to create a hostile and intimidating environment for the Claimant. She had said, in clear terms, that contact from the Respondent made her emotional. We have no difficulty in concluding that, subjectively, the effect for the repeated conduct was to create a hostile and intimidating environment for her.

504. While some of the correspondence may have been necessary in isolation, what we must look at is the overall picture. The Claimant, having asked the Respondent to keep correspondence to a minimum, was then contacted 11 times in a three-week period – on average, more than once every other day. Given what she had explained to Mrs Noble about the way correspondence made her feel, we conclude that it was objectively reasonable for the correspondence to have the effect it did on the Claimant.

505. The Claimant was absent from work at that point by reason of work-related stress. Her evidence, which we accept, is that stress exacerbated her disability (and vice versa). We consider that there was therefore an inherent causal relationship between the conduct complained of, and the Claimant's disability. It is in our judgment impossible to separate the treatment (continuing to contact the Claimant repeatedly despite being asked not to do so) from the fact that the Claimant was absent for a reason which was linked to her disability. The Respondent's explanation for the treatment was that (in essence) they had a duty of care to the Claimant and had to check on her welfare. We have some doubts about that. In the circumstances, the Respondent's duty of care would on the face of it have been more effectively observed by complying with her expressed wishes. But it in any event, it still cannot be separated from the Claimant's disability, given the causal link between the absence and the disability.

506. It follows that the allegation is made out as an allegation of harassment related to disability.

507. We could see no connection to the Claimant's race. We accept that Mrs Noble was unaware of the Claimant's stated preference not to have her birthday recognised. The fact that that message was not passed on was

poor management practice. That is exactly the sort of information that Mr Henderson ought to have made sure was passed on to the Claimant's next manager. But it was nothing to do with the Claimant's race. And Mrs Noble, not being aware of the Claimant's feelings, could not sensibly be criticised for sending a birthday card in line with her normal practice. So the allegation does not succeed as one of harassment related to race.

Victimisation – Protected Acts

508. The Respondent accepted that each of the acts relied upon by the Claimant as protected acts for the purposes of claim 2 were protected acts. We do not need to say any more about them.

Victimisation – Alleged detriments

References in [square brackets] at the end of the allegation are to the alleged protected act from which each detriment was said to flow.

3.3.2.1 – around and after the meeting of 15 October 2020 Ms James allegedly making untrue, prejudiced and biased statements about the Claimant [3.3.1.1 and 3.3.1.2]

509. The earliest protected act relied upon by the Claimant for Claim 2 was raising her grievance on 11 November 2020 (there was a typographical error on the list of issues, in that it referred to 11 November 2019).

510. The statement the Claimant relied upon for this allegation were those made in the immediate aftermath of the meeting of 15 October 2020 in the meeting with Ms Bradbury and the report written for Mr Gregory. Those pre-dated the Claimant's formal grievance. It follows that they could not be because the Claimant had done the protected acts relied upon.

511. Therefore, this allegation fails.

3.3.2.2 – On 6 June 2021, Mr Brazier on behalf of Mr Dennis Gregory rejecting the Claimant's request for a move to a new work area [3.3.1.1, 3.3.1.2 and 3.3.1.3]

512. We have found that this occurred, in that the Claimant requested a move to a new work area and that was not allowed. We considered that this constituted a detriment to the Claimant. She wanted to move to another department; she was not given the opportunity to do so.

513. The Claimant had raised two grievances, in which she made allegation of discrimination. She had also asked to be moved away from her work area on the basis. All three of those were protected acts. She was then not permitted to move. We consider that the Claimant has surmounted the initial threshold of showing facts from which, in the absence of a contrary explanation, discrimination could be found.

514. We therefore turn to consider the Respondent's explanation. The Respondent's explanation was that the reason the Claimant was not moved was that there was no opportunity for her elsewhere. We repeat what we said regarding allegation 3.2.1.8 (which was an allegation of harassment based on the same refusal of the Claimant's transfer request).

515. For substantially the same reasons we set out under that allegation, we conclude that the Respondent has not discharged the burden of showing a reason for the transfer which was not related to the protected acts relied upon by the Claimant.

516. It follows that the allegation is made out.

Claim 3
Victimisation – Protected Acts

517. The Respondent accepted that items 4.2.1.1 and 4.2.1.3 were protected acts. We need say no more about them. Item 4.2.1.2 was a catch-all referring to each of the informal complaints relied upon as protected acts for the purposes of claim 1. We have already expressed our conclusions regarding each of them (a number of which were accepted by the Respondent). We do not need to repeat our conclusions on them.

4.2.1.4 – On 16 December 2020, raising a complaint with Mr John and Ms Lloyd that emails in relation to her grievance were being removed from her inbox

518. When raising the apparent issue with her emails disappearing, the Claimant clearly referenced her grievance. She referred to the emails disappearing as being "unlawful" and made reference to the potential for a referral to the Information Commissioner. That is a clearly a reference to some form of breach of her rights under data protection legislation. However she also described the disappearing emails, at the point when Ms Lloyd was commencing her investigation, as being "convenient".

519. Read in context, we conclude that that is an allegation that the Equality Act 2010 was also being breached. What the Claimant was implying was, in essence, that the emails were being deleted *because* she had raised a grievance. Her grievance was a protected act. In substance therefore, this was a complaint of victimisation. So we conclude that in raising a complaint that emails relating to her grievance were being removed from her inbox, the Claimant did a protected act.

Victimisation – Alleged detriments

4.2.2.1 – An alleged discriminatory comment made by Ted Watson on 6 September 2020 [4.2.1.3]

520. We have found as fact that the alleged comment was not made. It follows that the allegation fails.

4.2.2.2 – Not upholding the Claimant's grievance on 25 January 2021 [4.2.1.1]

521. The Claimant's grievance was, of course, not upheld (save for the part regarding Mr Alam). We have already dealt with the factual basis of this complaint when dealing with allegation 2.2.1.6. (an allegation of harassment). We do not consider that rejecting the Claimant's grievance was objectively unfavourable treatment of the Claimant. We have already concluded that Ms Lloyd carried out a reasonable investigation and reached a reasonable conclusion. The mere fact that it was not the conclusion the Claimant wanted cannot, in our judgement, mean that the outcome was unfavourable treatment.

522. In any event, we would have concluded that it was not because of the Claimant's protected acts. That is, the reason the grievance was not upheld was not because it contained a complaint of discrimination. We accept Mrs Lloyd's evidence that the reason the grievance was not upheld was because, having investigated it, she concluded that it was not substantiated.

523. It follows that this allegation fails.

4.2.2.3 – Around August 2021 an alleged insufficient response to the Claimant's SAR [4.2.1.1, 4.2.1.2, 4.2.1.4]

524. There were issues with the initial response to the Claimant's Subject Access Request. She had to follow up in order to be sent documents that ought to have been captured in response to her initial request. In the context of the request as a whole, we consider that the word "insufficient" is too strong to describe the relatively small number of documents that were missed.

525. But in any event, we consider that the real reason why the documents were not provided was simply an oversight. We have gone straight to considering the Respondent's explanation for the missing documents. It is in our judgement relevant that the individuals who failed to make a full disclosure on the first occasion were:

525.1. Mr John, of whom the Claimant had a very high opinion, and who was not the subject of any allegations within her grievance or any other allegations of discrimination. Indeed, at the end of Mr John's cross-examination, the Claimant described him as a "great manager" and thanked him for all of his help during her employment. Mr John was also unaware of the details of the Claimant's grievance.

525.2. Mr Watson, who was the Claimant's Trade Union rep, and in respect of whom there would inevitably be a blurring of boundaries

regarding whether documents were held by the Respondent or by the Trade Union. That uncertainty or blurring of boundaries continued right up until the hearing before us, when documents held by the Trade Union were disclosed to the Respondent for the first time mid-way through the trial.

525.3. Mrs Noble, who was unaware of the details of the Claimant's grievance.

526. We are therefore satisfied that the initial failures in response to the Subject Access Request were nothing to do with the fact that the Claimant had done a protected act.

527. It follows that this allegation fails.

Discrimination arising from disability

4.3.1.1 – In November 2021 Mr Brazier advise that formal action will be taken due to the Claimants' continuing sickness absence

528. The Respondent accepted that this amounted to unfavourable treatment of the Claimant. That is unarguable right. The formal stage of an absence policy being invoked, which carries with it the risk of escalation, is clearly unfavourable treatment.

529. The Claimant says that the "something" which arose in consequence of her disability was the sickness absence. There was limited medical evidence before us, but the Occupational Health reports indicated that the Claimant's microprolactinoma caused migraines, and that the migraines were exacerbated by stress. The Claimant was absent by reason of work related stress. Her evidence, which was consistent with the Occupational Health advice, was that the stress consequently exacerbated her prolactinoma (and vice-versa).

530. We therefore find that the absence did arise in consequence of her disability. It was not the sole cause of the absence; but it contributed to her inability to work.

531. The absence was, of course, the reason why the Claimant was informed that formal action would be taken.

532. The Respondent had knowledge that the Claimant had a disability within the meaning of the Equality Act 2010. We have found that the Respondent had constructive knowledge from the point when the Claimant discussed her microprolactinoma with Mrs James in October 2020. But in any event, the June 2021 Occupational Health report advised that the Claimant was likely to be covered by the provisions of the Equality Act 2010.

533. We turn then to consider the Respondent's objective justification. The burden is on the Respondent to show that the treatment was objectively justified. The legitimate aim relied upon by the Respondent in respect of this allegation was as follows:

> "Giving fair warning to employees at risk of attendance management action to ensure that they are aware of, and able to prepare for, the potential attendance management action"

534. We have some doubts about whether warning employees about potential attendance management action is, in itself, capable of being a legitimate aim. The warning is a means to an end. The aim itself cannot be simply to warn employees. Rather, we consider that it could only be a legitimate aim if the underlying attendance management action would, in itself, be carried out in pursuit of a legitimate aim. We can see in principle how such absence management process may well be carried out in pursuit of a legitimate aim. But that is not how the Respondent has put its case.

535. In any event, however, Respondent bears the burden not merely of showing that the aim pursued is legitimate, but that its actions were proportionate. We did not have in evidence before us a copy of the Respondent's sickness policy. Nor did we have a copy of the letter sent by Mr Brazier (although once again, it must have been clear to the Respondent long before Mr Brazier retired that it would be a relevant document).

536. We do, of course, bear in mind that the Claimant was on the verge of exhausting her contractual sick pay. She had been absent for a period of around four months. But without sight of the correspondence, and without understanding the policy framework within which the Respondent was operating, we cannot be satisfied that the approach taken by Mr Brazier was proportionate.

537. It follows that the allegation is made out.

LOI 4.3.1.2 – Withdrawn

<u>Direct disability discrimination & Direct race – nationality discrimination</u>

538. We deal with the allegations of direct discrimination together, as they relate to the same factual allegation. The allegation is that the Claimant's grievance was treated differently to that of Ibie Osagie, her comparator.

539. Ibie Osagie is Nigerian. She does not share the Claimant's disability of prolactinoma and asthma. The Claimant's case is that Ibie Osagie raised a grievance, following which all of the individuals she complained about were moved away from the site. Therefore although the allegation is that the Claimant's grievance was treated differently, we consider that the allegation is really about what happened after the grievance.

540. There was evidence before us some papers relating to a grievance raised by Ms Osagie in 2021. Mr Watson's evidence was that he understood that the Claimant was actually referring to another grievance raised by Ms Osagie some ten years earlier, in which she complained about being made fun of due to her accent and disability. The Claimant accepted in her evidence that that was what she was talking about – her evidence was that she was told about it by Ms Osagie in December 2019.

541. Mr Watson's evidence was that Ms Osagie's previous grievance was upheld, and that the perpetrators of the allegations she made were then subjected to disciplinary action. His evidence was that he had represented them within the subsequent disciplinary proceedings.

542. We accept Mr Watson's evidence. It follows that Ms Osagie is not an apt comparator. She raised a grievance which was found to be substantiated. The Claimant's grievance was found not to be substantiated. We have found that that conclusion was a reasonable one. So in terms of what happened to Ms Osagie (and the perpetrators of the acts she grieved about), she was not in materially the same circumstances as the Claimant.

543. For completeness, we should say that there is nothing in the evidence before us which leads us to consider that an employee who did not share either the Claimant's disability, or her nationality, would have been treated any differently in the way that her grievance was investigated and consequences that flowed from it.

544. It follows that the complaints of direct discrimination fail.

<u>Jurisdiction</u>
<u>Claim 1</u>

545. In respect of claim 1, given the dates of early conciliation, any act or omission taking place before 23 November 2020 is outside the primary time limit.

546. We have found that three allegations in claim 1 are made out:

546.1. 2.3.2.8 (an allegation of victimisation, which took place on 27 July 2020)
546.2. 2.2.1.1 (an allegation of harassment, which took place on 23 November 2020)
546.3. 2.3.2.17 (an allegation of victimisation, which took place on 29 December 2020)

547. The final two allegations were brought within the primary time limit. The Tribunal has jurisdiction to hear them; they succeed.

548. In respect of the earlier allegation, we do not consider it could be said to be part of a continuing act with the later allegations, because:

548.1. It involved a different manager, Hugh Henderson. The later allegations involved Mrs James and Mrs Lloyd.

548.2. It was of a different nature to the other two allegations. It was an allegation that Mr Henderson had ignored a complaint by the Claimant. We consider that in the context of the other allegations, it was something of a standalone (in contrast to the other two allegations, which both related to the treatment of the Claimant's grievance).

548.3. It was separated in time by four months from the next oldest successful allegation.

549. We therefore turn to consider whether it would be just and equitable to extend time. In that regard:

549.1. The claim was brought about eight months after the matter complained of, so around five months outside the primary time limit.

549.2. There was no direct evidence given regarding the reason for the delay. The Claimant was represented by a Trade Union for at least some of that time.

549.3. While we have found that it was not part of a continuing act with the other successful allegations, it was nonetheless in the Claimant's mind part of a broader picture of ongoing discrimination.

549.4. Importantly, while the claim did not reach hearing until March 2024, only a very small part of the time between the allegation and the hearing date was attributable to the Claimant's delay in bringing the claim. That delay only accounted for five months of the nearly four years until the allegation came to be heard by the Tribunal. We therefore do not consider that the cogency of the evidence was materially affected by the delay of a few months in bringing the claim.

549.5. We therefore consider that there is limited prejudice to the Respondent in extending time. The only real prejudice is that it would gain a windfall, in that an otherwise substantiated allegation would fail for want of jurisdiction. On the other hand, the prejudice to the Claimant if time were not extended would be significant. She would lose a claim which, but for the delay, she would have won.

550. In all of the circumstances, we therefore consider that it is just and equitable to extend time in respect of allegation 2.3.2.8. It follows then that the Tribunal does have jurisdiction in respect of the allegation. The allegation succeeds.

Claim 2

551. In respect of claim 2, given the dates of early conciliation any act or omission taking place before 22 April 2021 is outside the primary time limit.

552. We have found that six allegations in claim 2 succeed on the facts:

552.1. 3.3.2.2, an act victimisation which took place on 6 June 2021

552.2. 3.2.1.4, an act of harassment which took place on or around 15 October 2020 but of which the Claimant was not aware until she received the Subject Access Request documents in August 2021.

552.3. 3.2.1.5, an act of harassment which again took place on 20 October 2020, but of which the Claimant was not aware until she received the Subject Access Request documents in August 2021.

552.4. 3.2.1.8, an act of harassment which took place on 7 June 2022.

552.5. 3.2.1.10, an act of harassment which took place on 14 June 2021.

552.6. 3.2.1.14, an act of harassment which took place on 5 August 2021.

553. The only two allegations of harassment which even arguably took place outside the primary time limit are 3.2.1.4 and 3.2.1.5. We consider that time cannot have started to run in respect of them until the Claimant became aware of them on receipt of the Subject Access Request – that is when the tort occurred, because it is when the conduct had the proscribed effect on the Claimant. It follows that each of the allegations is in time. They succeed.

554. Even if we are wrong about that, we would nonetheless have concluded that it was just and equitable to extend time. Once the Claimant became aware of the issue, she raised the claim promptly.

Claim 3

555. In respect of claim 3, given the dates of early conciliation any act or omission taking place before 5 September 2021 is outside the primary time limit,

556. The only allegation from claim 3 which is made out on the facts is the complaint of discrimination arising from disability (4.3.1.1). That relates to a letter sent in November 2021. It follows that it is within the primary time limit. It succeeds.

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Employment Judge Leith

24 May 2024
Date