EMPLOYMENT TRIBUNAL'S

Claimant: Ms M Saha
Respondent: Sony Interactive Entertainment Europe Limited

Heard in-person at London Central

Before: Employment Judge Nicolle
Nonlegal members: Mr J Carroll and Mr P De Chaumont-Rambert

Representation
For the Claimant: In person
For the Respondent: Ms N Cunningham, of Counsel

JUDGMENT

1. The claims for equal pay, direct sex and race discrimination under s.13 of the Equality Act 2010 (the EQA), harassment on the grounds of race under s.26 of the EQA, victimisation under s.27 of the EQA, and unfair dismissal under s.94(1) of the Employment Rights Act 1996 (the ERA) fail and are dismissed.

Reasons

The Hearing

2. The case was listed for a hybrid hearing for 16 days commencing 4 March 2024. However, for various reasons there were a number on non-sitting days as a result of the non-availability of members of the Tribunal. Three additional days from 26-28 March 2024 were added so that the evidence and submissions could be heard. The Tribunal then undertook its deliberations in Chambers on 3 April 2024.

3. Whilst the hearing was listed as hybrid no witnesses, and it would appear no members of the public, participated via CVP. The hearing was recorded.

4. There was an agreed bundle comprising of an initial 4695 pages. The Respondent had produced a supplemental bundle comprising of various court and

tribunal decisions from previous claims brought by the Claimant. The Claimant produced a small number of additional documents during the hearing, which with the consent of the Respondent, were added to the bundle.

5. The Tribunal was provided with an initial reading list primarily comprising the Claimant's initial skeleton argument, the witness statements, pleadings and certain other key documents within the bundle. The Tribunal was referred to additional documents during the evidence but ultimately the Tribunal was a only taken to a relatively small proportion of the total documentation contained within the bundle

Witnesses

6. The Claimant provided a 124 page, 718 paragraph, witness statement. She was cross examined for over two days.

7. The Respondent called the following witnesses listed in the order which they appeared:

Breda Argyrou
Financial Controller, Overheads Team (Finance) (Ms Argyrou)

Rajesh Subramanian
Overheads Accountant (Sony Contractor), Overheads Team (Finance)
(Mr Subramanian)

Brett Davey
Assistant Accountant (Sony Contractor), Overheads Team (Finance)
(Mr Davey)

Karnis Bailey
Legal Consultant (External) Vista Employer Services (Ms Bailey)

Abayomi Alemoru
Director of Legal Practice & Investigation Services (Vista Employer Services
(Mr Alemoru)

Susan Balcombe
Head of HR Practice (External) People Risk Solutions (Ms Balcombe)

Andy Wilson
Finance Director of Finance & Accounting, Finance Leadership Team
(Mr Wilson)

David Carroll
Vice President Finance & Accounting, Finance Leadership Team
(Mr Carroll)

Jennie Baker
Director, Talents Enablement (Ms Baker)

Nick Stott

Employee Relations Lead, HR Ops Team (Mr Stott)

8. Nadine Bainbridge, Vice President of Human Resources, HR Leadership Team (Ms Bainbridge) produced a witness statement but did not give evidence. She is on maternity leave and whilst she was due to give evidence via CVP was unable to do so as result of her child's sickness.

9. The Tribunal spent the first day and a half reading the witness statements, pleadings and other documents to which we were referred. We then heard an application by the Claimant to strike out the Respondent's defence to her unfair dismissal claim on the basis that the communications forming the basis of her dismissal were subject to judicial proceedings immunity. This application was dismissed and oral reasons were given to the parties. However, for completeness written reasons of that oral ruling are included in the conclusions section of this judgment.

The Issues

10. There was an agreed list of issues. It is not necessary to set out the issues at this point but our conclusions pertaining to them are set out later in this judgment. During the hearing I regularly informed the parties that the Tribunal's findings of fact and conclusions would be confined to those matters directly relevant to the list of issues rather than the Tribunal descending into the considerable detail of the events, communications and accounting practices, giving rise to the multiple allegations brought by the Claimant of sex and/or race discrimination/harassment on the grounds of race.

Direct discrimination on the grounds of sex

11. The Claimant relies on Mr Subramanian, Mr Davy, Lewis Copsey, Finance Assistant, Overheads Team (Finance) (Mr Copsey), Mr Ruffet and Mr McKay as actual comparators and alternatively on hypothetical male comparators.

Direct discrimination and harassment on grounds of race

12. The Claimant identifies as of Indian origin. The Claimant relies on Ms Naumovski, Mr Davy, Mr Copsey and Mr Wakefield as actual comparators and alternatively on a hypothetical comparator of a different race to her.

Findings of Fact

The Claimant

13. Between 22 November 2016 and 8 December 2017, the Claimant was engaged by Investigo Limited, which contracted with the Respondent. The Claimant was employed by the Respondent on 11 December 2017 as a Financial Accountant within the General Ledger Accounting Team, reporting to Ms Argyrou, until the termination of her employment on 10 February 2023.

The Claimant's previous legal proceedings

14. Ms Cunningham referred the Tribunal to the judgments pertaining to the Claimant's claims in the High Court of Justice v Imperial College of Science, Technology and Medicine [2011] EWHC 3286 (QB) and her Employment Tribunal claim and subsequent EAT Appeal in respect of her employment with Capita PLC in form 15 March 2017 until 17 October 2019. It is not necessary in this judgment to refer in detail to those proceedings. Nevertheless, it is relevant to record that Ms Cunningham took us to various paragraphs within the respective judgments which she contends give rise to what she contends represent very similar scenarios in the Claimant's working relationships with her supervisors/managers/colleagues in those academic/employment roles as those which the Respondent contends have arisen in the chronology of events giving rise to these proceedings.

The Claimant's CV

15. The Claimant had an academic background in medicine. She has been engaged in accounting/financial roles since March 2008. She is not a fully qualified accountant.

Mr Subramanian

16. Mr Subramanian is the Claimant's comparator for her equal pay claim so the Tribunal will make findings of fact regarding whether the Claimant was performing like work with him. Pursuant to a previous case management order the Claimant's alternative contention of work of equal value was deferred until the outcome of her like work claim.

17. From 2000 Mr Subramanian held various accounting roles to include with Solex Legal Services from September 2010 until December 2012, Sony Europe Limited from December 2012 to January 2014 and The Walt Disney Company EMEA from February 2014 prior to him starting as a contractor with the Respondent via his personal service company on 1 June 2018.

The Claimant's contract of employment dated 28 November 2017 and signed by the Claimant on 5 December 2017

18. This includes at clause 8.9:

> The Company reserves the right, where is considers it reasonably necessary, to require you to undergo an examination by a doctor nominated by the Company at its expense. You agree to provide such formal consent as maybe necessary for the result of such examinations to be disclosed to the Company. Any failure of refusal to attend an examination and provide the necessary consent could lead to disciplinary action being taken against you.

The respective benefits available to contractors (also referred to as contingent workers) and employees by the Respondent

19. Employees are entitled to pension contributions, BUPA private medical insurance, income protection, life assurance, BUPA dental insurance, 25 days' paid holiday, parental leave and other family friendly policies, the ability to buy or sell 5

days' holiday and flexible working hours. The only benefits to which both employees and contractors are entitled are free membership of the gym and free coffee within the cafeteria. The Respondent says that partly as a result of various benefits not being available to contractors that it is necessary to pay them a higher hourly/daily rate. Further, the Respondent says that the lack of security of employment is a factor necessitating higher hourly/daily rates for contractors when compared pro rata with the daily rates of employees. The Respondent also says that contractors provide a flexible and short term project resource and given that they are generally keen to maintain their positions they are often motivated to work long hours whilst the opportunity of ongoing engagement exists.

The sickness absence and pay policy and procedure overview

20. This provides that Company sick pay is equal to an employee's full basic salary for up to 21 days' sickness absence in any rolling 12-month period. If this entitlement is exhausted, any further Company sick pay will be solely at the Company's discretion.

Job Descriptions

21. The Tribunal was referred to various job descriptions to include those summarised below.

Overhead Accountant reporting to Financial Controller SIEEL.

22. This was a role performed by Mr Subramanian. The Claimant argued that there was not much difference with her role. Ms Argyrou says that there were significant differences and that the Claimant would not have been suitable for this role. She says that if the Claimant had shown the aptitude required she would have been offered this role but she was not working at Mr Subramanian's standard. The job description sets out a detailed summary of specific duties and it is not necessary for me to set those out.

Investigo Finance Business Partner posted 15 August 2022

23. This job description related to a position advertised by Investigo with a different employer. The Claimant referred to it on the basis that it represented the role she performed. The Respondent disputes this, and whilst it is acknowledged that parts of the role were done by the Claimant, it nevertheless represents a more in-depth position and that tasks, such as monthly meetings with budget holders, ownership of budget, assisting Head Office review and providing information for the board pack did not full within her remit.

Finance Overheads Business Partner job description with the Respondent

24. This represented a role performed by Mr Subramanian. The Claimant contends that it represents an inflated job description. Mr Argyrou said that the role was larger than anything the Claimant worked on. She said that a lot of the role involved new cost centres that were IT related and to do with infrastructure. She also says that Mr

Subramanian was assisting her in managing the Irish company set up post Brexit. Mr Argyrou described Mr Subramanian as her "go to".

Ms Argyrou's role

25. As Head of SIEE Accounting and Finance Ms Argyrou had responsibility for six teams. This included the General Ledger Team of which the Claimant was a member. Within that team at the relevant time Mr Subramanian was the IT Finance Manager of Project Account, Mr Davy the Overheads Management Accountant, the Claimant, Network Accountant, Kieran Aque, Distribution Markets Accountant, Mr Copsey Central Finance Accountant and Nisha Patel, Finance Assistant.

The Claimant's annual performance reviews

1 April 2018 – 31 March 2019

26. The Claimant received a positive performance appraisal from Ms Argyrou. She was described as a reliable member of her central GL team and having a great willingness to assist other team members so that tasks are completed and deadlines are not impacted. The one significant negative recorded by Ms Argyrou was that the Claimant needed to build on her collaboration skills as the issues she continuously faced with many teams she had to business partner were causing issues in her day to day role.

1 April 2019 – 31 March 2020

27. In Ms Argyrou's evaluation of the Claimant she stated: "Mowe has produced some great work this year". However, she went on to state:

"Unfortunately all of this great work has however been undermined by the constant issues we seem to have with Mowe and business partners throughout the business and also within other Finance teams. Mowe's erratic behaviour in this area has undone all her hard work and I am constantly receiving complaints from areas of the business complaining about her attitude and her rudeness and her refusal to change her ways of working. Until Mowe addresses this in her approach to her day to day work she will never unfortunately be able to progress in her current role".

Chronology of relevant events

28. It is not necessary for the Tribunal to refer to all of the multiple email communications we were taken to. We will focus on those which are salient to the issues and/or otherwise pertinent to the contentions made by the parties.

Email of 17 January 2017from Ms Argyrou to Mr Reynolds

29. This related to the recruitment of Mr Subramanian. It referred to a job specification being attached but this was not disclosed. The Claimant argues that this represented a deliberate omission by the Respondent as it would have shown that Mr Subramanian's role was comparable to hers and infers that the Respondent has something to hide.

Email of 25 January 2017 from Ms Argyrou to Rebecca McCormack, Senior Vice President, Finance Leadership Team (Ms McCormack)

30. Ms Argyrou said that a suitable candidate for the Overhead Account role had been found and this was Mr Subramanian. His daily rate was to be £304.35 which together with 15% agency commission gave a total daily rate of £350.

Email exchange of 3 May 2017 between Ms Argyrou, Mr Carroll and Jenny Lockwood regarding Adel Richens, Ex-Financial Accountant, Overheads Team (Finance) (Ms Richens)

31. Ms Richens had recently qualified as an accountant. Following a benchmarking exercise with a few agencies, a figure of between £38,000-£45,000 was advised for a newly qualified financial analyst/Asst accountant/. When the Claimant commenced as an employee on 11 December 2017 her salary was £43,793 per annum, together with a London allowance of £2,708.

Email of 15 December 2017 from the Claimant to Charmayn Walsh

32. This concerned the preparation of the budget packs and the Tribunal was referred by Ms Cunningham to the Claimant's email given its purported tone. The Claimant had advised Ms Walsh that her various communications within a 15 minute period were "wholly inappropriate". The Claimant says that she was trying to maintain a working relationship in a kind way.

33. The Tribunal was referred to an email from Ms Argyrou to Ms Walsh of 24 February 2018 in which she said that she had caught up with the Claimant who would like to extend an apology to her if she had felt that the conversation was badly timed. The Claimant says that her apology concerned any distress caused to Ms Walsh's children who were in attendance with her in the cafeteria when the conversation took place.

Email of 17 May 2018 from Ms Argyrou to Mr Carroll

34. She indicated that Mr Subramanian would be helping her cover of the Corporate Accounting role and proposed that this current daily rate of £375 should be increased to £420. Mr Subramanian was in effect stepping into the role of Jane Mayhew who held an IT Portfolio Accountant role. Ms Mayhew had been recruited via the IT Division.

Email exchange of 6-9 July 2018 between the Claimant, Florine Parawan and Ms Argyrou

35. In an email of 6 July 2018 the Claimant advised Ms Parawan that she could find out a VAT number from a Google search. Ms Argyrou responded on 9 July 2018 to advise the Claimant that she could not have her sending out emails in this tone. She went on to state:

> "As I have asked previously you have to tone down your emails as sometimes the way you talk to people. As you are going to get a reputation as being difficult

> to work with which then impacts us as a team. I want you to do well in this company. So please help yourself and loose the redness. I want you to catch up with Florine and apologise for this email".

36. The Claimant says that Ms Parawan was an accountant who expected everyone else to do her work. She says that if Ms Argyrou had a genuine concern regarding her email communications she would have got HR involved. Further, she considers that Ms Argyrou resented her.

Email exchange of 11 December 2018 between the Claimant, Paul Mafo, Finance Business Partner, Data Strategy & Operations Division (Mr Mafo), Robin Cleasby, Director of Business Planning and Insights, Global Store & Services Division (Mr Cleasby) and Ms Argyrou

37. In her email of 11 December to Mr Mafo the Claimant stated that he appeared to be struggling with the analysis of the BIS Profit and Loss – we have had a similar conversation regarding pre-payment postings. Mr Mafo responded later that day to include:

> "I am not sure why you feel you have to take the offensive line, or whether your intention is in actual fact to be provocative, but I would like to point out that it is counterproductive. If there is a way to make this a smoother working relationship, I am happy to meet in person to discuss".

The Claimant says that Mr Mafo had become increasingly difficult to work with and that he wanted her to do his work for him. She says that Ms Argyrou should have taken formal action against him.

Monica Nielson's grievance in June 2019

38. The Claimant contends that Monica Nielson, Ex-Corporate Accounting Manager, Overheads Team (Finance) (Ms Nielson) was another female employee who left as a result of the discriminatory behaviour of Ms Argyrou towards female employees. The Claimant was interviewed as part of Ms Nielson's grievance investigation. As part of her interview with Alistair Langan, Senior Finance Director of Commercial Finance, Finance Leadership Team (Mr Langan) in his investigation of Ms Nielson's grievance the Claimant stated:

> "Ms Nielson is a different character, not a pleasant person to work with, she is rude. She won't even acknowledge her mistakes. She is uncompromising".

When asked about the incident between Ms Nielson and Ms Argyrou the Claimant stated:

> "If it was a bar brawl, it would have been Ms Nielson attacking Ms Argyrou. I would have said Ms Nielson needed to calm down and talk privately".

39. The Claimant disputes that the transcript of the investigatory meeting records what she said. This is consistent with a pattern where the Claimant contended that various contemporaneous records were inaccurate or had been retrospectively

altered to her disadvantage. We do not consider that any basis exists for this contention but rather take the view that the Claimant sought at various points in her evidence to disassociate herself from what she now realises were unhelpful earlier documented comments/communications from the narrative she is seeking to pursue as part of her claim.

Email of 22 August 2019 from Ms Argyrou to the Claimant

40. This related to SOX compliance and Ms Argyrou said to the Claimant that there was materiality involved and therefore please don't use the threshold as a reason not to issue these credit notes. When giving evidence in relation to this email the Claimant says that Ms Argyrou had physically walked into her in a lift and described it as "school ground bullying". However, there is no contemporaneous record of any such physical interaction. Further, the Claimant appeared to retract from her initial statement and rather stated that Ms Argyrou did not communicate with her in the lift but rather stood on her foot. We therefore do not find that any untoward physical interaction took place and had it done so we consider it incontrovertible that it would have been raised contemporaneously as a complaint by the Claimant and within these proceedings.

Email of 11 October 2019 from Brian Maihack, Head of Network Advertising Sales (Mr Maihack) to the Claimant

41. This concerned recent communications between the Claimant and Claire Kim, Director, Network Advertising Sales (Ms Kim) over the proceedings days. He said that there were emails from the Claimant to Ms Kim with language that is at a minimum aggressive and in some cases borderline inappropriate.

42. The Claimant replied to Mr Maihack, copying Ms Argyrou and Mr Wilson, on 17 October 2019 saying that she was not happy with his response.

Emails of 19 February 2020 between the Claimant and Ms Argyrou regarding Mr Davey

43. The Claimant advised Ms Argyrou that she felt that she was still training Mr Davey two years on from when he started.

Email of 9 April 2020 from Ms Argyrou to the Claimant

44. Ms Argyrou reprimanded the Claimant for the way she had spoken to and about Annabelle Dudman, Vice President, Global Store & Services Division (Ms Dudman) in a group email and said it was highly unprofessional. She went on to say:

"There is nothing in her email that warrants this response from you as her comment isn't directed at you so you shouldn't then have emailed her on a group email. I'm sorry you are wrong in this instance and you need to hold your hands up and email an apology to Annabelle".

Email of 27 April 2020 from Ms Argyrou to the Claimant

45. Ms Argyrou advised that she had sent the Claimant numerous emails chasing her on non-game debt issues. She went on to state that she wanted the Claimant to deal on a timely basis with any of Mr Ruffet's debt chasing requests and that the situation could not continue. The Claimant did not accept this and responded saying that she did not have the bandwidth to chase invoices when Mr Ruffet should be doing this.

Email of 14 December 2020 from Ms Argyrou to the Claimant

46. Ms Argyrou stated that she had now sent eight email chasers to the Claimant regarding the SKY self-billing. She stated: "It really is very unprofessional of you to be constantly ignoring my emails". The Claimant says that she was not ignoring Ms Argyrou but rather that Ms Argyrou had a recurring theme with women in her team. She said that Ms Nielson also had a problem with the number of issues raised by Ms Argyrou.

Email exchange of 9 November 2020 between the Claimant and Ms Argyrou

47. The Claimant advised Ms Argyrou that she would like to apply for five days' additional holiday to go to India to take her parents' ashes back and deal with their assets. The email exchange then progressed to the Claimant asking why Mr Subramanian would be entitled to work in India when she would not. Ms Argyrou advised that each request would need to be considered by HR. Mr Subramanian is an Indian citizen whilst the Claimant is a UK citizen of Indian origin.

Email of 4 December 2020 from Ms McCormack to Ms Argyrou

48. Ms McCormack asked Ms Argyrou to keep an eye on the Claimant as she needs to watch her tone. She referred to some of her comments being rude and inciteful especially in relation to Ms Dudman with whom she already had a tense relationship.

49. In an email of earlier that day Gordon Thornton, Senior Vice President, Global Stores & Services Division (Mr Thornton) had emailed Ms McCormack to say: "Groan-Mowe does know how to write an email ….. what does she think we have been up to".

Email of 10 December 2020 from the Claimant to Ms Bainbridge

50. The Claimant said that she had been thinking about leaving the Respondent due to Ms Argyrou's behaviour. She said that four Overhead Accountants had resigned that year to include Ms Nielson, Rebecca Naumovski, Ex-Corporate Accounting Manager, Overheads Team (Finance) (Ms Naumovski) and Andrew Wakefield (Mr Wakefield).

51. When cross examined the Claimant sought to retract her reference to Mr Wakefield and indicated that it might have been erroneous. She said that she may have intended to refer to Adele Richards. Ms Cunningham put it to the Claimant that this represented a retrospective realisation that the inclusion of Mr Wakefield as an employee who had left as a result of Ms Argyrou's attitude was inconsistent with her

claim of sex discrimination. We find that the Claimant's contemporaneous reference to Mr Wakefield represented the position as it existed in December 2020.

Email of 11 December 2020 from the Claimant to Mr Carroll

52. The Claimant asked Mr Carroll if they could meet to discuss Ms Argyrou who she contended was becoming increasingly aggressive and making irrational decisions and more mistakes than ever before. Further, she contended that Ms Argyrou was setting her up to fail. She said that she had approached Mr Wilson in the past and he had been very dismissive. She referred to an occasion on which she had asked his opinion on a material recharge and had received a response of: "Its management accounting so I don't really care, I only care if it is financial accounting".

53. Mr Carroll said that he was concerned regarding the alleged response from Mr Wilson and he took it up with him saying that he hoped it wasn't true. He disputes that the Claimant contended to him at this time, or at any time, that any conduct of Mr Wilson towards her was based on race. Mr Carroll raised this issue with Ms Bainbridge in HR.

Email of 14 December 2020 from the Claimant to Becki Polden, Human Resources Business Partner, HR Ops Team (Ms Polden)

54. The Claimant said that Ms Argyrou was singling her out and refers specifically to her wish to buy annual leave days in 2021 and contended that she had constructed a story that Mr Subramanian was allowed to work from India because he is an Indian citizen.

Conversation and email exchange of 15 December 2020 between Mr Carroll and the Claimant

55. The Claimant and Mr Carroll had a video call. The Claimant relies on it as her first protected act contending that she raised concerns of sex and race discrimination. Mr Carroll disputes this. In his follow up email he summarised their conversation and concluded by saying, please feel free to add anything I missed. There was no response from the Claimant, and given that his email did not make reference to any allegations raised by the Claimant of discrimination, we find that non were made and that the call on 15 December 2020 was not a protected act.

Email of 16 December 2020 from Ms Argyrou to the Claimant

56. This followed a call earlier that day during which Ms Argyrou had discussed concerns around the Claimant's management of her role. She said that the Claimant's current way of working was having a serious impact on herself, fellow team members and the organisation. She set out eight areas of concern.

57. The Claimant responded later that day stating that she did not agree with any of the comments made by Ms Argyrou and that she was working as a fully engaged member of the team. She says that this was the same type of behaviour as other colleagues had faced naming Ms Nielson, Mr Naumovski, Mr Wakefield and Lanh Le, Ex-Corporate Accounting Manager, Overheads Team (Finance) (Ms Le)

Email of 5 February 2021 from the Claimant to Mr Carroll

58. In a detailed email the Claimant stated that they would need to have another catch up regarding Ms Argyrou's behaviour. She raised a series of complaints regarding Ms Argyrou but did not refer to discrimination on account of sex. She contended that because of this ongoing behaviour she was fearful that she would lose her job because Ms Argyrou was passing mistakes on to her. She once again referred to a stream of recent leavers.

59. Mr Carroll said that he was becoming increasingly concerned regarding the complaints being raised by the Claimant and was referring them to HR and external legal advisers.

Email of 12 February 2021 from Mr Wilson to the Claimant and Mr Carroll

60. This related to the various individual meetings he had had with team members in December 2020. Neither the Claimant nor Mr Subramanian were invited to these meetings with invites having been sent by outlook and the meetings taking place over a coffee in the cafeteria. Mr Wilson made no notes of these meetings as they were intended to be informal discussions. He said that there was no need to have further discussions with the Claimant and Mr Subramanian as he had already discussed matters with them. He referred specifically to an occasion on or about 19 October 2020 when the Claimant came to his office and the second half of the one hour meeting involved her giving her views on various team members, working arrangements and so on. He already felt he knew what she and Mr Subramanian considered the position to be and therefore there was no requirement for further discussion.

61. In his email he explained to the Claimant that the discussion was to focus on the structure of the department and ways of working and not any views she may have on individual people/personalities in the department.

Email of 16 February 2021 from Mr Carroll to the Claimant

62. Mr Carroll advised the Claimant that for her concerns regarding Ms Argyrou's alleged conduct towards her to be investigated she would need to raise a formal grievance which would involve the Claimant's concerns being discussed with Ms Argyrou.

Email of 22 March 2021 from the Claimant to Mr Carroll

63. In a detailed email the Claimant set out her concerns regarding the performance of Blake McKay, Corporate Accountant (Sony Contractor) Overheads Team (Finance) (Mr McKay). She concluded by saying that she did not think it was fair that he was paid the amount he is given his experience in comparison to hers. Notwithstanding her concerns regarding Mr McKay's performance the Claimant was unwilling to submit a formal grievance. We find the Respondent's insistence that the Claimant should raise a grievance in relation to concerns regarding her colleagues' and subordinates' performance somewhat artificial as the grievance would not directly relate to her as the grievance subject but, assuming the concerns were legitimate, a more generic concern regarding business performance and efficiency.

Email of 20 April 2021 from the Claimant to Ms Polden

64. The Claimant indicated that she did not feel comfortable completing the annual performance review and enquired as to the outcome with Ms Argyrou before she would progress this.

Informal Investigation undertaken by Jon Budden, Senior Director Market Liaison/Opportunity Market West (Mr Budden)

65. The Claimant had been notified of his informal investigation on 21 January 2021.

66. As part of his investigation Mr Budden interviewed the Claimant on 27 April 2021. The Claimant had contended that it would be more appropriate for Mr Langan to conduct the investigation as he had undertaken a similar investigation following Ms Nielson's grievance. During her interview the Claimant contended that Mr Wilson had excluded her and Mr Subramanian from the December 2019 "investigation" of the Overheads Team. However, she made no reference to their exclusion being based on the grounds of race.

Email of 28 April 2021 from Mr Wilson to the Claimant

67. He attached a copy of the sickness absence and pay policy for her reference.

Investigation interview between Ms Argyrou and Mr Budden on 29 April 2021

68. Ms Argyrou said that she had explained to Mr Wilson that she felt completely bullied "by this woman" referring to the Claimant.

Email of 30 April 2021 from Ms Polden to the Claimant

69. Ms Polden confirmed that the Claimant would continue to receive her normal salary whilst she was off sick.

Email of 12 May 2021 from Ms Polden to the Claimant

70. Ms Polden advised the Claimant that her end of year review would need to be put on hold as she had not completed her self-assessment. This means that any impact on compensation will also be put on hold until the completion of the assessment and any necessary adjustments to compensation could be back dated once the process had been completed.

Email of 18 May 2021 from the Claimant to Ms Polden and Mr Budden

71. The email related to the question of removing head count but the Claimant contended that it involved a further incident of a manager (referring to Ms Argyrou) telling lies. She claimed that Ms Argyrou was seeking to deflect blame onto her and that this was another form of bullying.

Investigation meeting between Mr Carroll and Mr Budden on 21 May 2021

72. He stated that the Claimant is volatile and gets upset easily. He described Ms Argyrou as a whirlwind who works so hard but does not always focus on the right areas. He said that Ms Argyrou struggled to take herself out of the detail and tends to smother and micromanage. He said that he could understand why the Claimant would find that frustrating.

Letter from Mr Budden to the Claimant dated 18 June 2021

73. Mr Budden provided the Claimant with a seven page letter setting out the outcome of his investigation. He concluded that he did not see strong evidence of bullying from either Ms Argyrou or the Claimant, but rather a breakdown in the relationship between two individuals who have differing opinions of the expectations of one another's roles.

74. In relation to the Claimant's complaint that her pay was low compared to contractors/other team members he explained that contractors received an enhanced rate of pay due to the nature of how they engaged with the Respondent. He said that in light of her concerns that the Respondent had conducted a review of her salary based on her job role and benchmarking based on Radford codes and found that she was fairly paid. He expressed concern about the level of detail that the Claimant had provided in respect of some of her colleagues' qualifications, work histories and rates of pay.

75. Overall he found that the Claimant's concerns were not upheld. He recommended mediation and/or redeployment into a different team within Finance. Further, he proposed individual coaching for her and regular one to ones. He concluded by advising the Claimant that she may wish to raise a formal grievance.

Grievance Investigation

76. The grievance investigation meeting between Ms Argyrou and Mark Bowles (Mr Bowles) on 4 August 2021 related to Ms Argyrou's grievance concerning the Claimant. Ms Argyrou stated that it was a completely different work place now that the Claimant was off sick and that she was not a team player.

The Claimant's formal grievance dated 20 August 2021

77. In a 24 page grievance letter the Claimant complained of:

- the aggressive behaviour or Ms Argyrou since 2018;
- bullying by Ms Argyrou in 2020;
- Ms Argyrou taking the credit but never the blame;
- attempting to block her annual leave request;
- overruling budget submissions;
- downgrading her role;

- unjustified arguments-13 GMS Asset Life;
- unjustified arguments – FY 20 budget packs administration;
- withholding information and further overruling;
- name calling “unprofessional”;
- false allegations and vexatious complaints – 16 December 2020;
- exclusion from meetings and work related discussions;
- excessive supervision;
- vexatious allegations – £1.2 million variant which did not exist;
- constant undue criticism and failure to act;
- threatening behaviour in front of team;
- removal of duties;
- blamed for removed head from the budget; and
- gender, race discrimination, equal pay and personal injury.

Email exchange on 6 August 2021 between Mr Wilson and the Claimant

78. In an email Mr Wilson advised the Claimant that her current fitness to work note was coming to an end on 11 August and enquired as to whether she would be able to return to work after this. The Claimant responded saying that she was aware that there were three wellness days next week when the company would be closed and if so would her return to work be on 16 August 2021. As a matter of fact the Claimant did not return to work for the remainder of her employment.

Email of 29 March 2022 from the Claimant to Sophie Lockwood of Charles Russell

79. Ms Lockwood of Charles Russell was one of the solicitors instructed in respect of the Claimant’s Tribunal claim. There was a protracted process of the Respondent disclosing documentation and information concerning the Claimant’s equal pay claim to include that of her named comparators Mr Subramanian and also originally Mr Dave all y. In her email the Claimant contended that she had good reason to believe that Ms Lockwood had may have made a false statement in relation to the payments made by the Respondent to Mr Subramanian. She added: “if proven to be false, this would be contemptable”.

Email of 30 March 2022 from the Claimant to Nick Hurley of Charles Russell

80. The Claimant repeated her concern that she believed there had been a deliberate false statement by Charles Russell and that they had sought to conceal critical information. She stated that a complaint to the Bar Council and the Solicitors Regulatory Authority would be warranted.

Claimant's grievance investigation report dated 5 April 2022

81. At paragaraph 15 Mr Alemoru found the Claimant to be resistant to change, abrasive in emails, slow to respond to communications, not a team player, causes and uses her job description to challenge when asked to carry out routine tasks, seeks to do things her own way and readily criticises colleagues for making mistakes and lacking competence.

82. He did not consider that there is any evidence to show that Ms Argyrou behaved towards the Claimant in a fractious or aggressive manner.

83. With one exception he rejected the allegations contained in the Claimant's grievance. That exception was at paragraph 81.1 where he found on the balance of probability that Ms Argyrou had made inappropriate comments to the Claimant in emails exchange between them, with two colleagues copied, on 22 February 2020 in relation to the request for the Claimant to check POs against the Asset Register.

84. At paragraph 95.11 Mr Alemoru said he was concerned as to whether the Claimant had made the allegation of race discrimination, claiming that Mr Wilson had attempted to cut her sick pay, in bad faith.

85. At paragraph 97.5, in relation to the equal pay claim, he expressed concern that the Claimant, without foundation, had accused Ms Argyrou of fraudulent behaviour.

86. In his conclusion at paragraph 106 he considered that the majority of the Claimant's concerns related to routine issues and questions arising from the production of financial/budgeting Information. He said that it appeared that at any point where Ms Argyrou had expressed a different view to the Claimant that she had perceived that as being overruled, or that Ms Argyrou is instigating an argument or attempting to somehow undermine her or cast her in a poor light.

87. At paragaraph 107 he concluded by stating that the evidence tends to show that the relationship between Ms Argyrou and the Claimant has broken down.

Investigation report into the grievance raised by Ms Argyrou dated 6 April 2022

88. In conclusion Mr Alemoru at paragaraph 42 found that the Claimant had undermined Ms Argyrou as a manager, had failed to follow processes established within the team, had failed/refused to cooperate and support the team, was unresponsive when responding to requests for information in emails in general and acted in such a way as to create difficult relationships with colleagues across the business.

Emai of 9 May 2022 from Ms Polden to the Claimant

89. Ms Polden advised the Claimant that a fixed term role of Corporate Accounting Manager was to be appointed to support with the work load and people management within the team. The Claimant's role, together with other accountant roles in the team, would report into this position moving forward.

Claimant's grievance appeal dated 7 June 2022

90. The Claimant sent an 11 page appeal letter to Ms Polden.

Email of 10 August 2022 from Ms Baker to the Claimant

91. Ms Baker once again raised with the Claimant the non-completion of her performance self-assessments FY20/21 and FY 21/22.

Occupational Health report from Capital Medical Services dated 7 September 2022

92. The report written by Heather Davison, OH Physician (Ms Davison) referred to it appearing that the Claimant's employment relationship was "irretrievably broken". She said that agreeing a suitable exit strategy would be the likely best option. She said that given the relationship breakdown adjustments to her role would not be expected to assist her to return to work.

93. The Claimant objected to Ms Davison's "non-medical" reference to the breakdown in her working relationship. She was unwilling to provide the unredacted report to the Respondent but rather redacted those sections where Ms Davison commented on the breakdown of the working relationship.

Claimant's grievance appeal investigation outcome December 2022

94. At paragraph 111.1 Karnis Bailey, Legal Consultant (External), Vista Employer Services (Ms Bailey) stated that she was satisfied that the evidence presented in relation to comparators for equal pay does not show on face value that the Claimant's pay was impacted by her gender. She rejected all other grounds of appeal.

Judgment of Employment Judge Elliott dated 22 November 2022

95. This judgment contained various findings of fact regarding the pay information relating to the Claimant's comparators disclosed by the Respondent for the purposes of a proposed judicial mediation. At paragraph 37 she held that the information sent to the Claimant on 18 March 2022 for the purposes of the judicial mediation was wrong to a very substantial degree. At paragraph 55 she records that the Claimant placed at the door of Ms Argyrou a very serious allegation of the fraudulent creation of documents. At paragaraph 56 she records that the Claimant had made some very serious allegations about the Respondent's legal team, both solicitors and counsel, in the provision of the pay information. At paragraph 57 she found no impropriety of any sought on the part of the Respondent's legal team. At paragraph 92 she said: "Ms Argyrou knew that the information was wrong and did nothing to correct it. This does not amount to fraud or dishonesty".

Email of 22 December 2022 from Mr Stott to the Claimant

96. He stated that as a gesture of goodwill, and to assist with the transition, the Respondent was prepared to offer a tapered reduction in sick pay with the Claimant's pay being reduced to 50% of her usual salary with effect from 1 January 2023 and to nil with effect from 1 February 2023.

Letter of 18 January 2023 from Ms Bainbridge to the Claimant

97. The Claimant was invited to a disciplinary hearing on the basis that the relationship between her and the Respondent had irretrievably broken down. Specific matters referred to were that she had:

- Repeatedly alleged, without justification and despite evidence to the contrary, that a deliberately false statement was made by the Respondent's solicitor, Charles Russell Speechlys LLP;

- Threatened without, legitimate basis, to report Charles Russell to the Solicitors Regulatory Authority and to report the Respondent's barrister to the Bar Council;

- Falsely accused the Respondent and, in particular, Ms Argyrou of fraud; and

- Falsely accused the Respondent of fabricating documents, to be relied upon at the Employment Tribunal

Letter dated 25 January 2023 from the Claimant to Mr Stott

98. The Claimant made written submissions for the disciplinary hearing given that she did not consider that she was sufficiently well to attend. She stated that Charles Russell were complicit in the materially misleading disclosure of pay data. She stated that the Respondent and its legal team had sought to frustrate the legal process. Further, she stated that the Respondent's then barrister had attempted to mis-direct the Tribunal. She asserted that the various conduct of which she complained went to the ethics and professional integrity of the Respondent's legal team. Further she asserted that Ms Argyrou had knowingly facilitated the tax evasion of Mr Subramanian, and possibly other contractors on her team. This related to an issue regarding the use of IR35.

Letter dated 10 February 2023 from Ms Bainbridge to the Claimant

99. Ms Bainbridge decided that the allegations against the Claimant justified her dismissal. She found that the Claimant had made serious allegations of fraud and deliberate falsification of documents against a number of employees, the Respondent's legal advisors, and the Respondent more generally, asserting both a wide ranging conspiracy to mislead her and a further conspiracy to defraud HMRC. She found there to have been an irreparable breakdown of the trust and confidence between the Claimant and the Respondent.

Letter dated 15 February 2023 from the Claimant to Ms Bainbridge

100. The Claimant appealed against the termination of her employment.

Letter dated 24 March 2023 from Ms Balcombe to the Claimant

101. Ms Balcombe rejected the Claimant's appeal following the hearing held on 10 March 2023. Ms Balcombe referred during the Tribunal hearing to the Claimant restated her belief that Ms Argyrou had lied saying: "I know Breda is lying. I have been very clear about this".

102. Ms Balcombe considered it to be entirely reasonable for the Respondent to have sight of the unredacted Occupational Health report.

Witness evidence

103. To the extent not covered in the chronology above the following matters are of particular relevance from the witness statements.

Claimant

Equal pay claim

104. She asserts that she and Mr Subramanian were recruited to help analyse and cleanse the GB71 profit and loss and balance sheets accounts. She asserts that whilst she had the job title of Financial Accountant that she was working as a Finance Business Partner. She refers to Mr Subramanian's promotion as being "spurious".

Direct sex discrimination

105. She contends that Ms Argyrou had to have a say in every piece of work in which she was involved so that she could undermine her and cast doubt over her skill set even though her concerns were completely baseless. She refers to constant "gaslighting" by Ms Argyrou and her "frivolous" complaints and attempt to harass her out of her job following their video call in December 2020.

Direct race discrimination

106. She contends that Mr Wilson ignored her in the office and did not appear to acknowledge her presence or her contribution to the Overheads Finance Team and Finance Department.

107. She contends that Mr Wilson sought to gaslight her by portraying her as an employee who caused trouble and was responsible for low morale.

108. The Claimant said that Mr Subramanian informed her that he would never get promoted because of his accent. She provided no details. Mr Subramanian denied making such a remark. We therefore find that no such remark was made. Further, Mr Subramanian denies experiencing any discrimination on account of his race during his engagement with the Respondent.

Ms Argyrou

109. Ms Argyrou has been off work since September 2022 as a result of what she contends to have been the impact of the investigation into allegations raised against her by the Claimant, which followed on from a very difficult period for her at work because of the Claimant's behaviour towards her.

110. She refers to receiving complaints regarding the Claimant's conduct from teams outside of Finance.

111. She summarised the following behaviours of the Claimant:

- Struggling to see other people's point of view;
- An inflated view of her own abilities and unable to accept that she had made mistakes; and
- She did not seem concerned with deadlines

112. She contends that Mr Subramanian had more experience than the Claimant. She describes him as a super user of SAP, the software used by Finance, which is a particular skill set required for a senior role. The Claimant was not regarded as a super user.

113. Ms Argyrou says that the Claimant did not really engage in any complex project work. She says that Mr Subramanian's roles were more complex and time consuming. He had to work longer hours than the Claimant.

Sex discrimination

114. In relation to the Claimant's contention that bonus accruals were correct on 7 October 2020 when she raised the issue again in December 2020, Ms Argyrou says that she has the right to ask the person who has posted the numbers questions to validate their entries. She would do this with any other employee and only the Claimant had an issue and took it as a personal attack.

115. In relation to the budget pack management she says that the Claimant did not update the budget packs correctly and she had to amend them herself. Her only concern was to ensure that correct numbers were provided.

116. She says that the Claimant was the only member of her team that she had to consistently chase for all of her monthly reconciliations.

Mr Subramanian

117. He says that the Claimant's role was less complex and more routine than his. It did not involve any project work. She generally had much shorter working hours. He says that he had much deeper technical knowledge and understanding of the software/systems than the Claimant.

118. He describes the Claimant as being confrontational and sometimes rude, not with him particularly, but that is how she behaved towards Mr Copsey and Mr Davey, particularly in terms of her tone.

Mr Davy

119. He says that his and Mr Subramanian's work was more complex than that undertaken by the Claimant. Examples of this were the budgets and their reporting requirements. He says that GB73 was (and is) a much smaller part of the business that GB71.

Mr Wilson

120. He refers to an occasion in October 2019 when the Claimant came to his office and remained for approximately 1 hour. He says that she proceeded to tell him about a number of departmental concerns, her views on individual team members' abilities and how she would do his job differently if she was in his position. He says that he also spoke informally with Mr Subramanian in December 2019.

121. He says that the Claimant had an inflated view of her abilities. He says that she often refused to help other team members and raised complaints about their work.

122. He denies that any changes made in 2022 were to demote or materially reduce the responsibilities of the Claimant or other team members. He says that no other team members were concerned by the reorganisation or complained that they had been demoted from their roles.

Mr Carroll

123. He describes the Claimant as being "very free with her opinions". He says that she had an inflated sense of her own importance and ability and was not great at her own job and there were concerns about the quality of her work.

124. He denies that during his video call with the Claimant on 15 December 2020 she alleged any form any of discrimination.

125. He said he found dealing with the Claimant's numerous complaints challenging and so sought HR advice throughout.

Ms Baker

126. She says that she found it very stressful managing the Claimant's case and communicating with her and would get a sense of dread everytime she received an email from her. She described it as the most time consuming and stressful employee relations case she had ever dealt with in her 18 year career in HR.

The Law

Time limit for discrimination claims

127. S123 of the EQA provides:

(1) Proceedings on a complaint within section 120 may not be brought after the end of—

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

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

(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.

128. For acts extending over a period, it is relevant to consider whether a discriminatory regime, rule, practice or principle, which had a clear and adverse effect on a complainant, existed. There is a distinction between a continuing state of affairs and a one-off act with ongoing consequences.

129. Guidance was provided in analysing what constitutes conduct extending over a period in Hendricks v. Metropolitan Police Commissioner [2003] IRLR 96 to include per Mummery LJ in the Court of Appeal at paragraph 48:

> "the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs, by the concept of an act extending over a period".

130. Extension of time under s123(3) is the exception rather than the rule Robertson v. Bexley Community Centre [2003] IRLR 434.

131. The checklist of factors in s.33 of the Limitation Act 1980 is a useful guide of factors likely to be relevant, but a tribunal will not make an error of law by failing to consider the matters listed in s.33 provided that no materially relevant consideration

is left out of account: Neary v Governing Body of St Albans Girls' School [2010] ICR 473. Section 33 requires the court to take into account all the circumstances of the case, and in particular the factors set out at s.33(3). Those factors which are relevant to the claim are:

> (a) the length of, and reasons for, the delay by the claimant;
>
> (b) the extent to which the cogency of the evidence is likely to be affected by the delay;
>
> (c) the promptness with which the claimant acted once she/he knew of the facts giving rise to the cause of action; and
>
> (d) the steps taken by the claimant to obtain appropriate professional advice once she/he knew of the possibility of taking action.

132. The Court of Appeal in Southwark London Borough Council v Afolabi 2003 ICR 800, CA, confirmed that, while the checklist in s.33 provides a useful guide for Tribunal's, it need not be adhered to slavishly.

Sex and race discrimination and the burden of proof

133. Under s13 (1) of the EQA read with s.9, direct discrimination takes place where a person treats the claimant less favourably because of sex/race than that person treats or would treat others. Under s.23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

134. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of sex/race. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the claimant was treated as she was.

135. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that a person has contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A can show that he or she did not contravene the provision.

136. Guidelines on the burden of proof were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258. The tribunal can take into account the respondent's explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v

Nomura International plc [2007] IRLR 246, CA). The Court of Appeal in Madarassy, a case brought under the then Sex Discrimination Act 1975, held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g., sex) and a difference in treatment. LJ Mummery stated at paragraph 56:

137. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the respondent had committed an unlawful act of discrimination."

138. Further, it is important to recognise the limits of the burden of proof provisions. As Lord Hope stated in Hewage v Grampian Health Board [2012] IRLR870. "They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other."

Conscious or unconscious thoughts of the alleged discriminator

139. An act may be rendered discriminatory by the mental processes, conscious or nonconscious, of the alleged discriminator: Nagarajan v London Regional Transport [1999] ICR 877, HL. In such cases, the tribunal must ask itself what the reason was for the alleged discriminator's actions. If it is that the complainant possessed the protected characteristic, then direct discrimination is made out. If the reason is the protected characteristic, that answers the question of whether the claimant was treated less favourably than a hypothetical comparator; they are, in effect, two sides of the same coin. per Lord Nicholls: "In every case…it is necessary to enquire why the claimant received less favourable treatment. This is the crucial question. Was it on grounds of race? Or was it for some other reason, for instance because the claimant was not so well qualified for the job. Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision."

140. In Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337, HL, per Lord Nicholls at paragraph 10.

141. As set out by Lord Nicholls in at [11], and albeit assuming a difference of treatment (which the Claimant cannot do): "…employment Tribunal's may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? If the latter, the application fails. If the former, there will usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground,

was less favourable than was or would have been afforded to others." It is permissible for the tribunal to answer the hypothetical comparator question by having regard to how unidentical but not wholly dissimilar cases have been treated: Chief Constable of West Yorkshire v Vento (No.1) [2001] IRLR 124, EAT, per Lindsay J at paragraph 7; approved in Shamoon, per Lord Hutton at paragraph 81.

142. A benign motive is irrelevant when considering direct discrimination: Nagarajan at 884G-885D, per Lord Nicholls. It is irrelevant whether the alleged discriminator thought the reason for the treatment was the protected characteristic, as there may be subconscious motivation: Nagarajan at 885E H:

> "I turn to the question of subconscious motivation. All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects. It is part of our make-up. Moreover, we do not always recognise our own prejudices. Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn. Conduct of this nature by an employer, when the inference is legitimately drawn, falls squarely within the language of s.1(1)(a). The employer treated the complainant less favourably on racial grounds."

Drawing of inferences

143. It is not sufficient for to draw an inference of discrimination based on an "intuitive hunch" without findings of primary fact to back it: Chapman and Anor v Simon [1994] IRLR 124.

144. The process of drawing inferences is a demanding task. If a tribunal is to make a finding of discrimination on the basis of inference, per Mummery J in Qureshi v Victoria University of Manchester [2001] ICR 863:

> "It is of the greatest importance that the primary facts from which such inference is drawn are set out with clarity by the tribunal in its fact-finding role, so that the validity of the inference can be examined. Either the facts justifying such inference exist or they do not, but only the tribunal can say what those facts are. An intuitive hunch, for example, that there has been unlawful discrimination is insufficient without facts being found to support that conclusion."

145. In determining whether a claimant has established a prima facie case, the tribunal must reach findings as to the primary facts and any circumstantial matters that it considers relevant: Anya v University of Oxford and Anor [2001] IRLR 377 (CA). Having established those facts, the tribunal must decide whether those facts are sufficient to justify an inference that discrimination has taken place.

146. Where there are multiple allegations, the tribunal should consider whether the burden of proof has shifted in relation to each one. It should not take an "across the board approach" when deciding if the burden of proof shifted in respect of all allegations: Essex County Council v Jarrett UKEAT/19/JOJ.

147. The tribunal may cast its net widely to look for facts that are consistent with discrimination and may therefore give rise to a prima facie case. The tribunal may take account of circumstantial evidence, including matters occurring before the alleged discrimination (even those outside the limitation period) and matters occurring afterwards if they are relevant. However, there must be "some nexus between the facts relied on and the discrimination complained of": Wheeler & Anor v Durham County Council [2001] EWCA Civ 844.

148. Din v Carrington Viyella Ltd [1982] ICR 256 is authority for a tribunal being able to take account of matters that took place prior to the discrimination complained of in order to assist it in drawing adverse inferences against a respondent.

149. The less favourable treatment must be because of a protected characteristic and that requires the tribunal to consider the reason why the claimant was treated less favourably in accordance with the guidance in *Nagarajan***.** The tribunal needs to consider the conscious or subconscious mental processes which led the respondent to take a particular course of action in respect of the claimant and to consider whether her gender played a significant part in the treatment: CLFIS (UK) Ltd v Reynolds [2015] EWCA Civ 439.

Harassment

150. Under s26, EQA, a person harasses the claimant if he or she engages in unwanted conduct related to a protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

151. In Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336, EAT, where Mr Justice Underhill (as he then was) gave this guidance:

> "An employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and Tribunal's are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

152. General Municipal and Boilermakers Union v Henderson [2015] IRLR 451 provides that a single incident is unlikely to be sufficient to create an environment sufficient to give rise to an offence of harassment.

Victimisation

153. Under s27 EQA, it is victimisation for a respondent to subject a claimant to a detriment because she had done a protected act. A 'protected act' includes making an allegation (whether or not express) that someone has contravened the EQA.

154. For the test that needs to be applied useful guidance is provided in Shamoon and that an unjustified sense of grievance cannot amount to a detriment. The test to be applied in determining whether a detriment exists is if a reasonable worker would, or might, take the view that the treatment was in the circumstances to his or her detriment. This must be applied by considering the issue from the point of view of the victim. While an unjustified sense of grievance about an alleged discriminatory decision cannot constitute detriment a justified and reasonable sense of grievance about the decision may do so.

Ordinary unfair dismissal

155. Under section 98(1)(b) of the Employment Rights Act 1996 (the ERA) the employer must show that the reason falls within subsection (2) or is some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. This is the set of facts known or beliefs in the mind of the year decision-maker at the time of the dismissal which causes him or her to dismiss the employee Abernethy v Mott, Hay and Anderson [1974] ICR 323, CA.

A reason may come within section 98(2)(b) if it relates to the capability of the employee. At this stage, the burden in showing the reason is on the respondent.

156. Under s98(4) the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

157. In considering the fairness of the dismissal, a tribunal must have regard to Iceland Frozen Foods v Jones [1982] IRLR 439 and the approach summarised in that case. The starting point should be the wording of section 98(4) of the ERA. Applying that section, the tribunal must consider the reasonableness of the employer's conduct, not simply whether the tribunal considers the dismissal to be fair. The burden is neutral. In judging the reasonableness of the employer's conduct, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. The function of the tribunal is to determine whether in the circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within that band, the dismissal is fair. If the dismissal falls outside that band, it is unfair.

158. A tribunal is entitled to find that dismissal was outside the band of reasonable responses without being accused of placing itself in the position of the employer: Newbound v Thames Water Utilities [2015] IRLR 735, CA, per Bean LJ at paragraph 61.

159. The tribunal must consider the context and gravity of any procedural flaw identified and it is only those faults which have a meaningful impact on the decision to dismiss that are likely to affect the reasonableness of the procedure.

Some other substantial reason (SOSR)

160. It is for the employer to show that the reason for dismissal was SOSR as per Terry v Sussex County Council 1976 ICR 536.

161. In Fay v North Yorkshire County Council 1985 ICR 133, the Court of Appeal approved the reasoning in Terry and set out the circumstances where the expiry of a fixed term contract can amount to SOSR, namely:

- it must be shown that the fixed term contract was adopted for a genuine purpose;
- that fact was known to the employee; and
- that the specific purpose for which the fixed term contract was adopted has ceased to be applicable.

ACAS Code on Disciplinary Procedures (the Code).

162. In reaching their decision, Tribunal's must also consider the Code. By virtue of s.207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence, and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be considered in determining that question.

163. The Code includes:

Inform the employee of the problem

164. If it is decided that there is a case to answer, the employee should be notified of this in writing. It would normally be appropriate to provide copies of any written evidence with the notification.

Hold a meeting with the employee to discuss the problem

165. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.

166. At the meeting, the employer should explain the complaint against the employee. The employee should be allowed to set out their case. The employee should also be given a reasonable opportunity to ask questions and present evidence.

Allow the employee to be accompanied at the meeting

167. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action
- the confirmation of a warning or some other disciplinary action (appeal hearings)

168. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. Employers must agree to a worker's request to be accompanied by any companion from one of these categories.

Polkey reduction

169. In Software 2000 v Andrews [2007] ICR 825, EAT, Elias P summarised (at paragraph 54) the authorities on "Polkey" reductions and made the following observations:

(a) in assessing compensation for unfair dismissal, the tribunal must assess the loss flowing from that dismissal, which will normally involve an assessment of how long the employee would have been employed but for the dismissal;

(b) if the employer contends that the employee would or might have ceased to have been employed in any event had fair procedures been adopted, the tribunal must have regard to all relevant evidence, including any evidence from the employee (for example, to the effect that he or she intended to retire in the near future);

(c) there will be circumstances where the nature of the evidence for this purpose is so unreliable that the tribunal may reasonably take the view that the exercise of seeking to reconstruct what might have been so riddled with uncertainty that no sensible prediction based on the evidence can properly be made. Whether that is the position is a matter of impression and judgement for the tribunal;

(d) however, the tribunal must recognise that it should have regard to any material and reliable evidence that might assist it in fixing just and equitable compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence; and

(e) a finding that an employee would have continued in employment indefinitely on the same terms should only be made where the evidence to the contrary (i.e., that employment might have been terminated earlier) is so scant that it can effectively be ignored.

Equal pay

Like work Section 65 of the EQA

(1)For the purposes of this Chapter, A's work is equal to that of B if it is—

(a)like B's work,

(b)rated as equivalent to B's work, or

(c)of equal value to B's work.

(2)A's work is like B's work if—

(a)A's work and B's work are the same or broadly similar, and

(b)such differences as there are between their work are not of practical importance in relation to the terms of their work.

(3)So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to—

(a)the frequency with which differences between their work occur in practice, and

(b)the nature and extent of the differences.

(5)A system is sex-specific if, for the purposes of one or more of the demands made on a worker, it sets values for men different from those it sets for women.

Defence of material factor Section 69 of the EQA

(1)The sex equality clause in A's terms has no effect in relation to a difference between A's terms and B's terms if the responsible person shows that the difference is because of a material factor reliance on which—

(a)does not involve treating A less favourably because of A's sex than the responsible person treats B, and

(b)if the factor is within subsection (2), is a proportionate means of achieving a legitimate aim.

(2)A factor is within this subsection if A shows that, as a result of the factor, A and persons of the same sex doing work equal to A's are put at a particular disadvantage when compared with persons of the opposite sex doing work equal to A's.

(3)For the purposes of subsection (1), the long-term objective of reducing inequality between men's and women's terms of work is always to be regarded as a legitimate aim.

(4)A sex equality rule has no effect in relation to a difference between A and B in the effect of a relevant matter if the trustees or managers of the scheme in question show that the difference is because of a material factor which is not the difference of sex.

(5)“Relevant matter” has the meaning given in section 67.

(6)For the purposes of this section, a factor is not material unless it is a material difference between A's case and B's.

Comparators section 79 of the EQA

(2)If A is employed, B is a comparator if subsection (3), (4), (4A) or (4B) applies.

(3)This subsection applies if—

(a)B is employed by A's employer or by an associate of A's employer, and

(b)A and B work at the same establishment.

(4)This subsection applies if—

(a)B is employed by A's employer or an associate of A's employer,

(b)B works at an establishment other than the one at which A works, and

(c)common terms apply at the establishments (either generally or as between A and B).

(4A)This subsection applies if a single body—

(a)is responsible for setting or continuing the terms on which A and B are employed, and

(b)is in a position to ensure equal treatment between A and B in respect of such terms.

(a)B is employed by the person who is A's employer under subsection (6) of section 195 of the Employment Rights Act 1996, or

(b)if subsection (7) of that section applies in A's case, B is employed by the person who is A's employer under that subsection.

(9)For the purposes of this section, employers are associated if—

(a)one is a company of which the other (directly or indirectly) has control, or

(b)both are companies of which a third person (directly or indirectly) has control.

170. Tribunal's must first ask whether the work is the same, or, if not, of a broadly similar nature. This involves a general consideration of the type of work involved, and of the skill and knowledge required to do it. Secondly, if the work is found to be of a broadly similar nature, a more detailed examination is required to ascertain whether the differences between the work being compared are of practical importance in relation to the terms and conditions of employment. This involves analysing the nature and extent of those differences and the frequency with which they occur in practice — S.65(3) EQA. It is for the claimant to prove that she does the same work or work of a broadly similar nature, but the evidential burden of showing 'differences of practical importance' rests on the employer — *Shields v E Coomes (Holdings) Ltd 1978 ICR 1159, CA*.

171. If the claimant is not employed on 'like work', then it is irrelevant that her comparator is paid more than her, even if he is paid more than the difference in their

work can reasonably justify — *Maidment and Hardacre v Cooper and Co (Birmingham) Ltd 1978 ICR 1094, EAT*.

172. Once the claimant has established that she is employed on like work to that of her higher paid comparator, the employer has an opportunity to defend the claim by establishing that the difference in pay can be explained by a material factor that is not the difference in sex — S.69 EQA.

173. The initial focus in a 'like work' claim is on the nature of the work being done by the claimant and the comparator, and whether this is the same or broadly similar — S.65(2)(a) EQA. This is a question of fact for the tribunal, which can be answered by a general consideration of the type of work involved, and of the skill and knowledge required to do it. While the job description may be a useful starting point, the focus must be on the actual work undertaken.

174. As the wording of S.65(2)(a) suggests, it is not necessary that the two jobs under comparison be identical; the work only needs to be 'broadly similar'. This allows for the comparison of jobs which, on the face of things, appear to be somewhat different. In *Dance and ors v Dorothy Perkins Ltd 1978 ICR 760, EAT*, Mr Justice Kilner Brown stated:

> 'We feel that it is vitally important to reiterate… that it is no part of [a] tribunal's duty to get involved in fiddling detail or pernickety examination of differences which set against the broad picture fade into insignificance.'

175. In deciding whether work is broadly similar, the EAT has warned Tribunal's against attaching too much significance to insubstantial differences. In *Capper Pass Ltd v Lawton 1977 ICR 83, EAT*, Mr Justice Phillips stated:

> 'The definition requires the… tribunal to bring to the solution of the question, whether work is of a broadly similar nature, a broad judgment. Because, in such cases, there will be such differences of one sort or another it would be possible in almost every case, by too pedantic an approach, to say that the work was not of a like nature despite the similarity of what was done and the similar kinds of skill and knowledge required to do it. That would be wrong. The intention… is clearly that the… tribunal should not be required to undertake too minute an examination, or be constrained to find that work is not like work merely because of insubstantial differences.'

176. The correct approach therefore involves a general consideration of both the work done by the woman and her comparator, and the knowledge and skill required to do it.

177. Clearly, the more substantive the differences between the two jobs, the less likely the work will be considered 'broadly similar'.

178. The comparison of jobs must take into account the whole job.

Submissions

Respondent

179. Ms Cunningham provided the Tribunal with a 36 page skeleton argument which she spoke to. There is no need for me to refer to this in detail but her principal arguments can be summarised as follows.

180. That "similar fact" evidence exists from the previous legal proceedings brought by the Claimant.

181. That the Claimant was not performing "like work" with Mr Subramanian.

182. That even if the Claimant and Mr Subramanian were doing like work, the difference in pay between them is explained by a material factor, namely Mr Subramanian's contractor status, which was not the difference in sex.

183. That in relation to the allegation of direct sex and race discrimination most of the individual complaints involve essentially trivial disagreements between the Claimant and Ms Argyrou and/or other colleagues.

184. That the Claimant's approach to her colleagues was characterised as being quarrelsome and abrasive.

185. That the Claimant was not demoted by Ms Polden's email of 9 May 2022 but in any event it affected Mr Copsey, Kieran Akue and Drew Bossey as well as herself and therefore could not have been an act of sex discrimination against the Claimant.

186. That there is no allegation of sex discrimination in relation to which the Claimant has established facts capable of passing the burden of proof to the Respondent.

187. The Respondent acknowledges that it made repeated errors in compiling comparator pay data. However, the Claimant's complaint of victimisation is misconceived, since the Respondent's attempts to collate the comparative data were part of its conduct of the proceedings, and therefore cannot form the subject matter of a claim by reason of judicial proceedings immunity.

188. That any claim of sex or race discrimination or victimisation relating to events predating 11 June 2021 is out of time, unless it can be shown to be part of conduct extending over a period.

189. That in respect of her claim for equal pay any claim relating to the Claimant's period as a contractor cannot possibly succeed

The Claimant

190. That in response to a question from me Mr Subramanian said that it would take "a week or a month" for someone to be trained to do his job, in other words it would only take this time for the Claimant to be capable of performing his role.

191. The Claimant's skeleton argument to a large extent repeats materials contained with her opening skeleton and witness statement and it is therefore not necessary to summarise its contents.

Discussion and conclusions

192. We will set out our conclusions in relation to the list of issues. However, to avoid this judgment becoming unduly long we summarise our conclusions in some areas on a generic basis rather than in relation to each and every individual allegation. As the Judge indicated during the hearing it was disproportionate and unnecessary for us to make findings of fact in respect of all of the individual workplace issues relied upon by the Claimant as allegations of direct sex/race discrimination or harassment on the grounds of race.

Equal pay

Like work

193. The Claimant was employed by the Respondent from 11 December 2017. We find that regardless of the substantive merits, regarding like work and any material factor defence, the Claimant would not have been able to successfully pursue such a claim prior to her employment commencing and therefore any claim for the period from 22 November 2016 until 10 December 2017 is discounted.

194. The Respondent has acknowledged that the Claimant and Mr Subramanian were employed by the same or associated employers at the same establishment for the purposes of s.79 of the EQA.

195. The Claimant is not able to rely on any claim to differential in pay prior to Mr Subramanian's commencement as a contractor on 1 June 2018.

196. Mr Subramanian's contractual pay terms were more favourable than the Claimant's. The differential in Mr Subramanian's favour increased substantially during the period of their concurrent engagement.

197. We find that the Claimant and Mr Subramanian did not perform like work for the purposes of S 65(1)(a) of the EQA. We reach this finding for the following reasons.

198. We accept the Respondent's evidence that the role performed by Mr Subramanian was at a higher level of complexity than that performed by the Claimant. In particular, Mr Subramanian undertook significant project work to include the IT project, the establishment of an Irish company post Brexit and the IR35 project.

199. We accept that Mr Subramanian had enhanced, and superior to those of the Claimant, SAP skills and that this provided significant business/practical value to the Respondent.

200. We accept Mr Subramanian's evidence that GB71 in which he worked, is a much bigger part of the business than GB73, where the Claimant worked.

201. We reject the Claimant's contention that her work was of greater value than Mr Subramanian's. There is no evidence to support this contention. Further, none of the witnesses, to include Mr Subramanian and Mr Davey, considered that this represented the position.

202. We accept Ms Argyrou's evidence that there was "a hell of a lot of difference" between the respective roles of the Claimant and Mr Subramanian. Further, we accept her evidence that Mr Subramanian was effectively her number two and go to person.

203. We accept the Respondent's evidence that Mr Subramanian worked typically worked longer hours than the Claimant.

204. However, we do not consider that the previous experience and qualifications of the Claimant and Mr Subramanian were sufficiently different to form part of our reasoning for rejecting the Claimant's contention that she and Mr Subramanian were performing like work.

205. We are consider it significant that many of the complaints raised by the Claimant were to the effect that she was being asked to perform job functions which she considered to be below her actual, or possibly more accurately, warranted status, and that the tasks were in her opinion of an administrative nature.

Material factor defence

206. Notwithstanding our finding the absence of like work we go on to consider, for completeness, whether the Respondent has shown that there is a material factor which explains the difference between contractual pay terms, and which is not the difference of sex, pursuant to s.69(1)(a) of the EQA. Whilst we do not consider that employment status, perceived employment status, qualifications or experience constitute material factors we do consider that market factors provide such a defence.

207. We consider that the material factor comprises the differential between employee and contractor terms and conditions. We consider it to be incontrovertible that the Respondent was required to pay contractors higher pro rata daily rates than equivalent employees to reflect the lack of security, together with the non-availability of significant ancillary benefits to include, but not limited to, pension, sick pay, holiday entitlement etc, which are only available to employees.

208. Further, contractors provide a potentially short term and high value option for the Respondent to undertake project work and at other times where demands are high. They do not represent a fixed cost and that is significant given the evidence which we heard, and accept, that the Respondent has very clear policies on maximum head counts and it is therefore difficult to obtain consent to employ additional individuals beyond the stipulated head counts in any given business area. Therefore, the business will often have to bring in contractors to fill any deficiencies in capacity. There is also a perception that contractors given the insecurity of their positions and wish to maintain engagement are often willing to go the extra mile and typically may work longer hours than equivalent employees.

209. For all of these reasons we therefore accept that this constitutes a material factor defence and had we found that the Claimant and Mr Subramanian were undertaking like work this defence would have prevented her claim succeeding.

210. No evidence was advanced by the Claimant that the material factor put women at a particular disadvantage when compared to men pursuant to s.69(2) of the EQA and we find that it did not.

211. We would have found that the material factor of market forces constituted a proportionate means of achieving a legitimate aim pursuant to s.69(1)(b) of the EQA. The legitimate aim being to enable the Respondent to have the right level of expertise, but subject to its head count levels, to enable the business to function effectively and that this could only be achieved by paying contractors at the appropriate market rate which for the reasons we have identified is significantly higher on a pro rata basis to that of a relevant qualified employee.

Direct discrimination on grounds of sex

212. Whilst the Claimant named Mr Subramanian, Mr Davy, Mr Copsey, Mr Ruffet and Mr McKay as direct comparators very little of her evidence. None of her individual allegations actually involved a direct comparison between the treatment to which she claims she was subject and the comparative treatment they received. Her claim was predicated on the basis that Ms Argyrou treated her less favourably as a female employee than she would have treated actual or hypothetical male comparators

213. The Claimant sought to rely on the alleged less favourable treatment of other female employees, primarily Ms Le, Ms Richens, Ms Neilson and Ms Naumovski as evidence for a propensity of Ms Argyrou to treat female employees less favourably.

214. We reject the contention that any evidence exists that these individuals were treated less favourably by Ms Argyrou on account of their sex. We accept the evidence of Ms Argyrou as to the specific circumstances as to why these individuals left the Respondent's employment. In particular we find it significant that at the time of Ms Nielson's grievance in June 2019 the Claimant acknowledged that she was a difficult individual to work with and that she was the primary instigator of the altercation with Ms Argyrou. We find that to be inconsistent with the Claimant's subsequent contention that Ms Nielson had left as a result of Ms Argyrou's unreasonable behaviour.

215. As a general observation it is incontrovertible that Ms Argyrou had huge demands on her time with responsibility for six teams and approximately 44 employees. It is undoubtedly the case that she had a huge level of professional pride in her role and that of those who reported to her. This resulted in her working hugely excessive hours. No doubt she was under significant pressure given those responsibilities and the hours she was working. We also accept, as reflected in the evidence of Mr Carroll, that Ms Argyrou could on occasions be something of a micro manager and may have been reluctant to fully delegate tasks to her team members. Nevertheless, we consider that the above factors were generic and equally applicable to all employees and therefore not specifically addressed towards the Claimant or

female employees more generally. It is, however, significant that it was only the Claimant who reacted negatively to what she perceived to be the unreasonable supervision and micromanaging of her work by Ms Argyrou and treated this as being antagonistic and constituting bullying. We reject these contentions.

216. A such we do not consider that the Claimant's allegation that Ms Argyrou's supervision and micromanagement of her from October 2020 onwards constituted less favourable treatment. We find that she was treated on the same basis as all other equivalent employees.

217. Given that we do not consider that the alleged treatment constituted less favourable treatment it is not necessary for us to consider whether any evidence exists which would create an inference that such less favourable treatment was on account of sex. In any event we find that no such evidence exists and therefore had less favourable treatment been found to exist the burden of proof would not have shifted to the Respondent.

218. In view of our findings above it is not necessary for us to set out findings in relation to each of the individual allegations at paragraph 17(1) of the list of issues. However, we make the following general, but not intended to be complete, comments in relation to those allegations.

219. In relation to allegations 17(1)(a-c) we find that all of these matters are related to Ms Argyrou seeking clarification and progression of tasks which formed a reasonable element of the Claimant's responsibilities. The approach of the Claimant was to create unnecessary intractability in addressing these issues and undoubtedly this would have caused irritation to Ms Argyrou given the volume of her responsibilities and that she was having to repeatedly ask for tasks to be attended to and receiving unjustified resistance.

220. In relation to 17(1)(d) we accept Ms Argyrou's explanation for the content of her email to the Claimant of 16 December 2020. Given that the concerns which Ms Argyrou had by this stage regarding the Claimant's work, conduct, communications with her and others, we find that it was reasonable for her to set these out in a call with the Claimant and then as summarised in her email. As such we reject the Claimant's contention that these constituted unsubstantiated demands and find that Ms Argyrou would have addressed any other employee, who had behaved in a similar manner to the Claimant, on an equivalent basis. As such we do not consider that the contents of the email constituted less favourable treatment of the Claimant and further find that there would have been no evidence to infer that it was on account of the Claimant's sex had we found it to be less favourable treatment.

221. In relation to 17(1)(e) we find the position as per 17(1)(d). We accept Ms Argyrou's evidence that the Claimant was selectively avoiding, or at least delaying, in responding to emails from her with which she would rather not deal. We acknowledge that this must have been frustrating and irritating to Ms Argyrou.

222. In relation to 17(1)(f-h) we consider as per 17(1)(a-c) that these constituted normal work related duties.

223. In relation to 17(2) we do not consider that Ms Argyrou imposed a greater workload on the Claimant from February 2018 onwards. Whist it may well have been

that the precise composition of her duties changed that was within the reasonable scope of her job description. We accept that the whole team was constantly busy and the requirement for the Claimant to potentially perform additional duties to those for which she had originally been recruited was reasonable and did not constitute less favourable treatment.

224. In relation to 17(3) whilst some of the functions performed by the Claimant may have been of an "administrative" nature we consider that not surprising and consistent with the position for other equivalent employees. We reject the Claimant's contention that she was being treated less favourably by Ms Argyrou imposing on her tasks which were disproportionately administrative or otherwise non commensurate with her status. As such we reject the contention that this constituted less favourable treatment.

225. In relation to 17(4) we considered that this represented a reasonable part of the Claimant's job functions. We accept Ms Argyrou's evidence that the Claimant was the only member of her team that she had to consistently chase for all of her monthly reconciliations.

226. In relation to 17 (5) the Claimant was not refused permission to buy five additional days' holiday around December 2020 but turned the issue into one of her purportedly less favourable treatment than Mr Subramanian as to whether she would be allowed to work for the Respondent whilst in India. In any event in respect of this allegation, as with many of the others, it is incontrovertible that it had nothing to do with sex and no evidence has been advanced by the Claimant that any supposed less favourable treatment was so attributable.

227. In relation to 17(6) whilst it is acknowledged that this element of the Claimant's grievance was upheld by Mr Alemoru it was not found to be discriminatory on account of the Claimant's sex. To the extent to which it is relevant, which it largely is not, we are surprised by Mr Alemoru's finding. When we consider the totality of the evidence and the obvious and inevitable frustration Ms Argyrou was under regarding the Claimant's obstructive approach, we do not consider it surprising that she may have deemed her to be unprofessional. Further, we do not consider that the tone and circulation of the emails of which the Claimant complains was unreasonable given the circumstances. Further, it is notable that the Claimant had herself on numerous occasions branded other employees as being unprofessional, incompetent or unsuited for their roles and on occasions, for example, in relation to Ms Dudman, done so on email chains with various individuals copied.

228. Therefore we do not consider that this constituted less favourable treatment. Further, there is no evidence to infer that it had anything to do with the Claimant's sex.

229. In relation to 17(7) we reject the contention that the Claimant's concerns regarding Ms Ruffet, Mr Davey, Mr Copsey and Mr McKay were ignored. In any event, even had such concerns been ignored, we do not consider that this could have constituted less favourable treatment of the Claimant. It was not her role to assess and comment on the performance of her colleagues. It is relevant that the Claimant made numerous complaints regarding her colleagues to multiple parties to include Ms Argyrou, Mr Carroll and Mr Wilson. Whilst we find the Respondent's assertion that

she needed to raise a formal grievance surprising, given that these concerns related to colleagues of equivalent or junior seniority to her, we do not consider that this in itself constituted less favourable treatment. It was up to the relevant members of management to assess staff performance and address accordingly. The Claimant was in effect seeking to undertake a managerial role which was not within the scope within her duties. Further, in many instances the Respondent's evidence, which we accept, was that the individuals of whom the Claimant complained were actually effective performers, for example, Mr Davey and Mr McKay were well regarded. Mr Ruffet, who was responsible for chasing receivables on the Amazon account, may have been abrasive but he was considered to be effective in dealing with this client.

230. In relation to 17(8) we reject the Claimant's allegation that Ms Argyrou ignored her request for a job evaluation during her 2019 annual appraisal. We accept Ms Argyrou's evidence that she had legitimate concerns regarding the Claimant's performance and as such any suggestion that the Claimant should have been promoted would have been inconsistent with the performance concerns which then existed.

231. In relation to 17(9) we reject the contention that Ms Argyrou raised a frivolous and vexatious complaint regarding the £1.2 million variant. Once again we consider that this represented a reasonable request and consistent with the Claimant's job responsibilities.

232. In relation to 17(10) we repeat our findings and comments in relation to 17(6) above.

233. In relation to 17(11) we reject the Claimant's contention that she was demoted on 9 May 2022. In any event the Claimant was on long term sick leave at this time. Her role remained exactly the same with equivalent status, responsibilities and renumeration. In any event there is no evidence that it had anything to do with the Claimant's sex with male and female employees being equally affected but no one other than the Claimant complaining.

234. In relation to 17(12) we do not accept the Claimant's contention that this would have involved her being demoted to an administrative role. The Claimant would have retained most of her key duties. We accept that there would have been no detrimental changes to her role, but rather that this represented reasonable measures being taken by the Respondent towards building a more workable and robust structure, so that Europe was consistent with the structure across the US and Japan

<u>Overall conclusions on sex discrimination</u>

235. We reject all of the allegations that Ms Argyrou had treated the Claimant less favourably on account of sex. We consider that these essentially represented allegations made by the Claimant of routine workplace issues, and employment interactions with which she took exception, and that she has retrospectively sought to label them as being instances of sex discrimination. We find no evidence to support the Claimant's contention that Ms Argyrou treated her, or other women, less favourably on account of sex. Further, we consider that the Claimant's evidence to

the Tribunal was in some respects inconsistent with the contemporaneous evidence, for example, her inclusion of Mr Wakefield as being one of the employees who had left as a result of the purported unreasonable conduct of Ms Argyrou, which she subsequently sought to retract, and her evidence as part of the June 2019 Ms Nielson's grievance investigation meeting.

Direct race discrimination

236. As with her actual comparators for sex discrimination the Claimant made little, if any, reference to comparatively less favourable treatment than Ms Nomarski, Mr Davey, Mr Copsey and Mr Wakefield.

237. In relation to 22(1) it is correct that neither the Claimant nor Mr Subramanian received an outlook invite from Mr Wilson to an informal meeting in the cafeteria to discuss team issues. We reject the Claimant's assertion that this constituted an investigation, but rather accept Mr Wilson's evidence that it was an informal process given concerns regarding team structure and workloads. Further, we accept Mr Wilson's evidence that he had already received input from the Claimant and Mr Subramanian and as such did not consider it necessary to receive further input from them. We do, however, consider that Mr Wilson was remiss in sending outlook invites to some, but not all, team members and therefore understandably the Claimant may legitimately have felt that she had been excluded. Nevertheless, we do not consider that any such sense of exclusion was sufficient to constitute less favourable treatment. It represented a de minimis issue and is part and parcel of normal interactions within the workplace where employees will frequently have a subjective perception that they may have been excluded from a particular discussion, meeting or event. That in isolation is not sufficient to constitute less favourable treatment. Further, even had we found this to be less favourable treatment there is absolutely no evidence to infer that it had anything to do with the Claimant's race.

238. In respect of 24(2) as 24(1) above.

239. In relation to 24(3) whilst we accept Mr Wilson's response may have been dismissive we consider that this arose in the context of what was self-evidently already his considerable exasperation regarding the Claimant's, in his mind, excessive demands. It is significant that it was already involving HR in responses to her. He clearly perceived that the Claimant was troublesome and was experiencing difficulty dealing with her.

240. We consider it significant that when informed of this dismissive approach Mr Carroll was concerned and raised the matter with Mr Wilson. We therefore reject any contention that Mr Wilson's dismissive tone towards the Claimant in this response was systematic of a wider dismissiveness towards her by the Respondent's managers.

241. Even accepting that this dismissive comment was made we do not consider it sufficient to constitute less favourable treatment and there is absolutely no evidence to infer that it had anything to do with the Claimant's race.

242. In respect of 24(4) see 24(1) above.

243. In respect of 24(5) and 24(6) we do not consider that the alleged treatment was in any way less favourable. Taken at its highest the Claimant's assertion in respect of these, and other matters, is that any failure by the Respondent, and its managers, to immediately deal with her numerous requests and demands constituted less favourable treatment. There is no evidence before us to suggest that Mr Wilson, or others, could have dealt with any other employee raising such issues, concerns or queries in a more thorough or timely manner. As such we reject the contention that it constituted less favourable treatment and in any event there is no evidence that it had anything to do with the Claimant's race.

244. In respect of 24(7) this allegation is wholly unmeritorious. The Claimant's contention that in providing the Claimant with a copy of the sick pay policy that Mr Wilson was seeking to reduce her pay is contrary to the evidence. It represents entirely standard practice, and an employer could be criticised for failing to provide an affected employer with relevant policies. In any event, if the Claimant had genuinely been fearful that her pay would be reduced, this concern was immediately rebutted by HR who advised her that it would not and that her primary focus should be on her health and recovery. As such there was no less favourable treatment.

245. In relation to 24(8) as previously addressed the Claimant was not eligible for a bonus as she had not completed the required performance appraisal processes. As such there was no less preferable treatment as any other employee who had failed to complete the performance assessments would have been treated on an equivalent basis. In any event the Respondent advised the Claimant that once she had completed the performance appraisal any bonus and pay rise would be backdated. As such there was no less favourable treatment.

246. In relation to 24(9) this allegation is wholly unmeritorious. In any event the Claimant's case, taken at its highest, is predicated on a hypothetical. It would have involved her actually having returned to work on 11 August 2021 when the evidence is that she did not return to work during the remainder of the employment. No doubt had she done so she would have found that the office was closed and returned home. The Claimant was, in any event, aware of the wellness days and therefore suffered no disadvantage. We wholly reject the assertion that Mr Wilson deliberately provided the Claimant with false information. He was communicating with her regarding her recovery and possible return to work and we accept that it would have been an inadvertent omission not to mention the wellness days. This did not constitute less favourable treatment and the contention that it had anything to do with the Claimant's race is wholly misconceived.

247. In relation to 24(10) the position is as per 17(3) for the same allegation in relation to sex.

<u>Overall conclusions in relation to race</u>

248. We consider that the Claimant's complaints of direct race discrimination by Mr Wilson are wholly misconceived. As with sex discrimination we consider that the Claimant has taken a series of minor workplace issues with which she disagrees, or perceives she has been side-lined or otherwise not heard, and then asserted that all

of the treatment with which she takes exception must have had something to do with her race. There is absolutely no evidence to support this.

249. We consider it significant that the Claimant's attempt to utilise Mr Subramanian's position as evidence of the proclivity of Mr Wilson to discriminate against Indian/Indian origin employees to have been wholly unmeritorious. In particular it is significant that the Claimant contended that Mr Subramanian had informed her that he would not progress with the Respondent because of his Indian accent. That is inconsistent with the Claimant's evidence that he had received various "unwarranted" promotions and pay increases. In any event Mr Subramanian rejected any such conversation with the Claimant and the notion that Mr Wilson, or the Respondent more generally, treated him or other employees less favourably on account of their race.

Overall conclusions in respect of the allegations of sex and race discrimination

250. We do not consider that the Claimant was subject to any less favourable treatment. Further, we find no evidence to infer that even if such less favourable treatment had existed that he had anything to do with the Claimant's sex or race and as such the burden of proof does not shift, or would not have shifted, to the Respondent.

Harassment on the grounds of race

251. As the allegations in s.24 of the list of issues repeat the allegations of direct discrimination on the grounds of race there is no need for us to repeat our findings. These claims all fail and are dismissed. In any event if we had found any evidence upon which to infer that any of the alleged treatment had anything to do with the Claimant's race we do not consider that any of the incidents would have been sufficient to give rise to harassment pursuant to s.26 of the EQA. They were trivial, one off or otherwise insignificant matters and not capable of constituting harassment.

Victimisation Protected Acts

252. We reject the Claimant's contention that her call with Mr Carroll on 15 December 2020 constituted a protected act. There is no evidence that she raised any allegations of sex or race discrimination during this call.

253. The Respondent accepts that the Claimant's grievance of 20 August 2021 and her Employment Tribunal claim of 19 November 2021 constituted protected acts.

254. In relation to 27(1-4) the alleged detriments all predate the first protected act and therefore cannot possibly succeed. In any event we do not consider that any of the alleged treatment constitute detriments, and even if we had found the video call with Mr Carroll on 15 December 2020 constituted a protected act, we reject any causative link between such protected act and the incidents relied on as detriments.

255. In relation to 27(4) we reject the Claimant's contention that the duration of Mr Budden's informal investigation was unreasonably long.

256. In relation to 27(5) we repeat our findings as set out above as to the reasons for withholding the Claimant's annual bonus and pay rise in 2021 and 2022. She had not completed the required performance assessments.

257. In relation to 27(6) we accept the Claimant's assertion that the duration of the grievance investigation and ultimate report produced by Mr Alemoru was unreasonably long. However, we reject the Claimant's contention that this had anything to do with her having undertaken protected acts. It would have been wholly perverse for Mr Alemoru, or anyone else, to have artificially delayed the grievance investigation, and the finalisation of the resulting report, as result of the grievance including allegations of sex and race discrimination. There is no evidence that he did so. Further Mr Alemoru's evidence was that there was nothing unusual about the duration of his investigation and the timetable to produce the report. Nevertheless, it is apparent from some of the Respondent's witness statements that HR were becoming exasperated by the time taken and ultimately that was to the Respondent's financial detriment as the position taken was that any disciplinary proceedings against the Claimant should be deferred pending the outcome of the grievance process and the resultant appeal.

258. In relation to 29(1) we repeat our findings in relation to 28(6).

259. In relation to 29(2) the Respondent has acknowledged that it provided repeated misleading pay data regarding the Claimant's named comparators. We find no evidence that this was as a result of a protected act and in any event accept the Respondent's contention that any legal claim in this respect would be precluded as a result of judicial proceedings immunity. The reason for this being that judicial proceedings immunity precludes any legal claim arising from steps taken in litigation and the provision of comparator paid data by way of disclosure constituted such a step.

260. In relation to 29(3) we repeat our findings above in respect of the equivalent allegation made in respect of sex and race discrimination.

261. In relation to 29(4) and 29(5) this is again precluded by way of judicial proceedings immunity.

262. In relation to 29(6) we find that the Respondent was entitled to ask the Claimant to provide an unredacted version of the OH report. That was in accordance with the terms of her contract of employment. Therefore we find that the Respondent had a legitimate ground upon which to threaten the Claimant with disciplinary proceedings and further that this had nothing to do with any protected act she had undertaken.

263. In relation to 29(7) we accept that the Respondent was entitled to review and cut the Claimant's pay. She had been on full pay for a remarkably long period of 21 months without working and there was no indication that she was likely to return to work in the foreseeable future. Her full pay was substantially in excess of the stipulated minimum entitlement of 21 days' pay. The Claimant's assertion is in effect that the Respondent caused her ill health and therefore she should have continued to receive full pay until she recovered and/or the cause of her ill health had been addressed. However, we accept the Respondent's contention that the Claimant's

working relationship with it had irretrievably broken down, was beyond repair and was of wider reaching causation than solely the Claimant's working relationship with Ms Argyrou. Therefore we reject the Claimant's contention that this constituted a detriment as a result of a protected act but was rather a normal part of the Respondent's management of long term sickness absentees.

264. In relation to 29(8) we repeat our findings in relation to the grievance investigation generally. This claim is therefore rejected.

265. In relation to 29(9) we accept the Respondent's evidence that it had delayed the invoking of the disciplinary proceeding as a result of the grievance procedure and appeal remaining extant. We reject the Claimant's assertion that she was subject to spurious disciplinary proceedings where the real motivation was her having undertaken a protected act. In reality we suspect the Respondent was particularly reluctant to invoke a disciplinary process given its knowledge that the Claimant was actively pursuing Employment Tribunal proceedings. We accept the Respondent's evidence that the position had become insoluble and action had to be taken to address the matter one way or another.

266. In relation to 29(10) we reject the Claimant's contention that her dismissal constituted an act of victimisation for the reasons as set out above.

267. In relation to 29(11) this contention was once again precluded by judicial proceedings immunity.

Unfair dismissal

The Claimant's application to strike out the respondent's defence to her unfair dismissal claim on the grounds of judicial proceedings immunity.

268. An oral ruling was given on 5 March 2023 but for completeness the written reasons are included within this judgment.

269. This is an application made by the Claimant for the strike out of the Respondent's defence to the unfair dismissal claim. She made an application in a letter dated 19 February 2024 which was cut and pasted within the body of her skeleton arguments to which we have read. It relates to her dismissal which was effective on 10 February 2023. Her application is predicated on two grounds. First, that the communications between her and Charles Russell Speechlys, the Respondent's instructed solicitors, are subject to judicial proceedings immunity. Secondly that the substantive ground of dismissal, namely some other substantial reason or in the alternative gross misconduct, was outside the statutory provisions within the ERA, outside the range of reasonable responses and in this context the Respondent's defence has no reasonable prospect of success.

270. We were referred to the letter of dismissal dated 10 February 2023. There is no need to set it out in detail but it included under various headings allegations made by the claimant against the respondent's legal team, that the Respondent and its employees were culpable of fraudulent production and manipulation of documents and information, that various Respondent employees had lied and fabricated

documents. The Respondent asserts that these allegations were made without foundation.

271. There was also reference in that letter to the Claimant having sent a redacted version of an occupational health report dated 7 September 2022. It was not entirely clear as to what extent the Respondent relied on the redaction of that occupational health report as an alternative ground of dismissal. The Claimant accepts that she made redactions to the report primarily to remove the words that there had been an irretrievable breakdown of the working relationship. The Claimant says that the doctor was not qualified to make what she says was a legal assertion rather than a matter of her professional medical expertise.

272. The Claimant disputes the fact that communications were offensive, she says that there were serious errors in the pay data disclosed by the Respondent with an error of approximately £130,000 between the information supplied and what she says was the correct information.

273. The Claimant asserts that the judicial proceedings immunity as per the authority in Lincoln v Daniels [1962] 1QB 237 extends to all aspects of the litigation to include not just pleadings and other documents but interparty correspondence. Ms Cunningham helpfully assisted us by saying that no point was being taken on the applicability of judicial proceedings immunity but rather that the issue was that this was not a case of a legal suit arising out of the subject matter of the application of judicial proceedings immunity but rather that the dismissal of the Claimant arose from that interparty correspondence; in other words she asserts its immunity from suit not dismissal.

274. Further, Ms Cunningham refers to a number of elements which led to the Claimants dismissal. The manner of proceedings and the bad faith allegation. She referred us to Ezsias v North Glamorgan NHS Trust [2011] UK EAT/0399/09. This was a case when a doctor was subject to a disciplinary process as a result of his colleagues asserting that he had become very difficult to work with. At paragraph 29 of the judgment it states it seems to me that on any basis there is a crucial core of disputed facts in this case that is not susceptible to determination otherwise than by hearing it and evaluating the evidence.

The Law

275. We reminded ourselves of the provisions of Rule 37 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations. The Claimant relies on. The Claimant relies on Rule 37.1 (a) there being no reasonable prospect of success. She acknowledges, and is correct to do so, that the bar for a strike out is a high one in other words it should only in the clearest cases where it would be appropriate to strike out a case as having no reasonable prospect of success.

276. Given the concession made by Ms Cunningham it is not necessary for me to set out in detail the law on judicial proceedings immunity. Basically authorities such as Lincoln v Daniels, Heath v Commissioner of the Police for the Metropolis [2005] ICR 329 and A & B v Chief Constable of Hampshire Constabulary QB/2011/0700

make it very clear that there is immunity from suit from actions, communications or comments made during the course of proceedings and provides a fundamental protection for parties and their representatives involved in litigation.

Conclusions

277. We do not consider that it would be appropriate to strike out the Respondent's defence of the unfair dismissal claim. We reach that decision for a number of reasons.

278. First, this would inevitably involve us engaging in a mini-trial of the substantive issues as it is very apparent from the submissions made by the parties, and the documents to which we have been referred, that there are issues in dispute which require further consideration, for example, the Claimant asserts that her communications were not offensive and her comments were justified. The Respondent on the other hand says the comments were serious, they involved allegations against Respondent's employees and their lawyers of fraud, dishonesty and the manipulation/tampering with documents disclosed in the course of proceedings. These are obviously serious issues. They are not points upon which it could be said the Respondent has no reasonable prospect of success.

279. Secondly even if the defence were to be struck out this would not ultimately save the Tribunal any significant time. The unfair dismissal claim is a small part of a very substantial claim given the volume of documentation and is likely to only engage a relatively small proportion of the Tribunal time. Therefore even if the threshold were met for no unreasonable prospect of success, which we have found it does not, this would not be an appropriate case for such an issue to be determined at this point

280. Most significantly we accept that this is not a case where judicial proceedings immunity provides a ground for a strike out on the basis of no reasonable prospect of success. The situation is the reverse of what judicial proceedings immunity seeks to protect. It does not follow from communications having potentially attracted judicial proceedings immunity that they cannot in some instances provide a ground for dismissal.

281. It is important for us to stress that we are not in any way opining on the merits or otherwise of the Claimant's claim for unfair dismissal, in other words was her dismissal fair or unfair and in the alternative or additionally was her dismissal a detriment as an act of victimisation as a result of her having undertaken various protected acts. Those issues have not been determined. The only issue we have determined at this stage is that it would not be appropriate for the reasons given to strike out the Respondent's defence on the basis that there was no reasonable prospect of their defending the claim. That would be premature and in advance of the evidence something which would be inappropriate for us to determine.

Reason for dismissal

282. We find that the Claimant was dismissed for a potentially fair reason of some other substantial reason i.e. the irreconcilable breakdown in the relationship of trust and confidence. We find that this reason was sufficient to justify the dismissal of the Claimant. We find that the Respondent's decision to dismiss the Claimant was within the band of reasonable responses open to it.

283. The Claimant made no assertions that the procedure followed was unfair. We find that the procedure was fair and the Claimant, in view of her decision not to attend the disciplinary hearing on the grounds that she was not well enough, was able to make written representations. We find that these were taken into account.

284. Our only area of slight concern was that it was unclear as to what extent the Claimant's failure to provide the unredacted OH report constituted an allegation against her. We consider from the documentation and the evidence of Ms Balcombe that it formed a factor, but not a significant one, in their decision making process. However, we do not consider that the failure to make express reference to this allegation in the disciplinary invite letter was sufficient to render the dismissal unfair. We accept the Respondent's evidence that it was relied upon as illustrative, rather than determinative, of an irreconcilable breakdown of the working relationship. We accept that the Respondent's primary concerns were the Claimant's voluminous and repeated contentions that the Respondent, and its external legal advisors, had deliberately and/or fraudulently withheld or manipulated comparator pay data. We find it significant that notwithstanding the unequivocal findings of Employment Judge Elliott in her judgment promulgated on 22 November 2022 that the Respondent had been negligent in the provision of pay data, but not dishonest, that the Claimant refused to accept this and continued to make such assertions. Further, it is significant that during the hearing the Claimant took the Tribunal to relevant provisions within the Solicitors Regulatory Authority guidance to solicitors to include not to deliberately mislead courts, tribunals or other parties. We accept that neither the Respondent nor its legal advisers had any such deliberate intention.

Polkey and contributory conduct

285. Given our findings it is not necessary for us to address the issues of Polkey and/or contributory conduct. However, had we done so we would have found it inevitable that the Claimant would have been dismissed in any event given the breakdown in the working relationship and her very substantial period of ill health with no imminent prospect of her return to active employment.

Jurisdiction/time limits

286. All acts or omissions which occurred prior to 11 June 2021 are out of time unless they formed part of a continuing cause of conduct. Given our findings above it is not strictly necessary for us to address this but for completeness we do so. In relation to direct discrimination on the grounds of sex we find that the alleged actions of Ms Argyrou towards the Claimant did form part of a continuing course of conduct. They do not constitute individual discreet actions but rather a course of alleged less

favourable treatment under the overall umbrella overbearing supervision and micromanagement.

287. In relation to race discrimination we find that the alleged action of Mr Wilson in not interviewing the Claimant as a part of his "investigation" of the Overheads Team in or around January 2020 constituted a discreet act and therefore one which was out of time and that this also applies to those matters in 24(2) to 24(7). Those matters at 24(8-11) (in respect of 24(8) only in respect of the alleged refusal to award the Claimant her bonus and annual pay rise in 2022) are in time but as already set out failed on their substantive grounds.

288. No evidence was provided by the Claimant as to why it would be just and equitable to extend time in the event that we found that any elements of her claim are out of time. Given that the onus was on the Claimant to present such evidence the Tribunal does not exercise its discretion to extend time.

Overall conclusions

289. The claims for equal pay, direct sex and race discrimination under s.13 of the Equality Act 2010 (the EQA), harassment on the grounds of race under s.26 of the EQA, victimisation under s.27 of the EQA, and unfair dismissal under s.94(1) of the Employment Rights Act 1996 (the ERA) fail and are dismissed.

290. Whilst we acknowledge that the Claimant conducted herself in an exemplary manner during the proceedings we nevertheless consider that the majority of her claims were wholly misconceived. Whilst the Tribunal does not rely on the findings made in earlier court and tribunal proceedings in reaching its determinations it is nevertheless striking that such similar issues have arisen. The Claimant is clearly highly capable, and when she wants to be a personable. Nevertheless, it is self-evident to the Tribunal from the voluminous documentation that her focus became progressively misdirected into raising multiple concerns regarding other employees and becoming resistant to management from Ms Argyrou in particular. More generally she developed an increasingly abrasive and on occasions hostile attitude towards colleagues, which in a highly pressurised working environment inevitably created unwanted tensions, and proved extremely time consuming for managers in HR to address.

Employment Judge Nicolle

3 May 2024

Sent to the parties on:

17 May 2024

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For the Tribunal:

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