



EMPLOYMENT TRIBUNALS

Claimant Respondent
Ms. G. Spencer v **Schenider Electric UK Limited**

Heard at: **Birmingham** On: **25,26,27,28 March 2024, 11 April 2024 In Chambers 12 April 2024, 26 June 2024**

Before: **Employment Judge Wedderspoon**

Members : **Mr. Sharma**
Mr. Virdee

Representation:

Claimant: **In Person**

Respondents: **Mr. B. Frew, Counsel**

JUDGMENT

1. The unfair dismissal claim is not well founded and is dismissed.
2. Direct race discrimination allegations numbered in the list of issues 8, 9, 12, 13, 15, 21, 24, 25, 33, 35, 36, 37, 43 are well founded and succeed. The remainder are not well founded and are dismissed.
3. Harassment related to race allegations numbered in the list of issues 19, 20, 27, 28 and 42 are well founded and succeed. The remainder are not well founded and are dismissed.
4. Victimisation allegations numbered 2 and 3 in the list of issues are well founded and succeed. The remainder are not well founded and are dismissed.
5. All of the allegations of pregnancy/maternity discrimination (save for allegation 12) are well founded and succeed.
6. It is just and equitable to extend time.

REASONS

1. By claim forms dated 13 February 2022 and 13 October 2022 the claimant brought complaints of unfair dismissal, direct race discrimination; harassment related to race; victimisation and pregnancy and maternity discrimination. Her case is that there was an attempt to remove her from the contracts management team in preference for a white independent contractor; she was subject to harassment related to race; victimised when she raised grievances and subject to pregnancy/maternity discrimination. All claims are disputed by the respondent.

List of Issues

2. A list of issues was created by Judge Meichen at the first preliminary hearing on 20 September 2022 and a further list of issues was prepared at

the second case management hearing by Judge Kelly on 11 April 2023 at page 121 to page 129. The claimant had sought to alter this document in red highlighting on 16 February 2024 following a DRA hearing before Judge Dimbylow. By this point, witness statements had been exchanged by the parties based on the list of issues page 121 to 129 on the 24 January 2024. The respondent disputed the claimant's proposed amendment to the list of issues on the basis that witness statements had been exchanged on the 24 January 2024 and the lateness of the proposed amended list. The Judge explained to the claimant that the list of issues is an important document which can form a template to the preparation of witness evidence. If she wished to make an application the Tribunal could she could make it but noting that witness statements had already been exchanged on the 24 of January which had referred to the earlier agreed list of issues in place for over one year. The claimant did not pursue an application to amend the list of issues.

3. The agreed list of issues were as follows :-

Time Limits/limitation issues

- (a) Were all of the claimants complaints presented within the time limits set out in sections 123 (1)(a) and (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including : whether there was an act and/or conduct extending over a period and/or a series of similar acts or failures; where the time should be extended on a just and equitable basis.
- (b) Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 14 July 2022 is potentially out of time, said that the tribunal may not have jurisdiction to deal with it.

Unfair Dismissal

- (a) what was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98 (1) and (2) of the Employment Rights Act 1996 ("ERA")? The respondent asserts that it was misconduct.
- (b) If so, what's the dismissal fair or unfair in accordance with the ERA section 98 (4) and in particular, did the respondent in all respects act within the so-called band of reasonable responses? The claimant relies on the following :
- (1) The dismissal relied on a first written warning of June 2022 which the claimant says was unfair because such a disciplinary penalty was not merited by her actions because other people in the team did the same thing and were not disciplined.
 - (2) The claimant says that the e-mail to her manager of 10 June 2022 for which she was dismissed was not inappropriate or offensive as alleged by the respondent;
 - (3) The disciplinary decision maker had pre-made her decision. When the claimant asked to introduce new evidence, she told the claimant she was trying to throw a spanner in the works she did not listen to the claimant's arguments that she had sent the e-mail on 10 June in good faith and expressed an opinion that the claimant just did not like her boss.
 - (4) It was unfair to dismiss instead of giving a final warning
 - (5) The decision to dismiss was an act of race discrimination and victimisation

- (6) the appeal panel refused to listen to her audio evidence in its entirety and had pre made their decision.

Remedy for unfair dismissal

- (1) the claimant wants to be reinstated or re engaged
- (2) if the claimant was unfairly dismissed in the remedy is compensation :
- (i) if the dismissal was procedurally unfair what adjustment if any should be made to any compensatory award to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed/have been dismissed in time anyway; see Polkey v AE Dayton services Limited 1987 UK HL 8; paragraph 54 of Software 2000 limited v Andrews 2007 I CR825 (W Devis & Sons Limited v Atkins 1977 3 All ER 40; Credit Agricole corporate and investment bank v Wardle 2011 IRLR 604.
- (ii) Would it be just and equitable to reduce the amount of the claimant's basic award because of any blameworthy or culpable conduct before the dismissal, pursuant to ER a section 122 (2) and if so to what extent?
- (iii) Did the claimant by blameworthy or culpable actions cause or contribute to a dismissal to any extent and if so by what proportion if at all would be just and equitable to reduce the amount of any compensatory award pursuant to ER a section 123(6)?

EQA section 13 direct discrimination because of race

- (a) The claimant identifies herself as black British
- (b) Did the respondent subject the claimant to the following treatment
- (1) on or around 20 March 2020 Carl Melia telephone the claimant and ordered her not to purchase the IACCM course because it was too expensive for her to pay for without her Amex card. The purpose of this call was to set the claimant up to make a mistake and or so that the claimant would fail to pass the course before 31 December 2021;
- (2) Carl Melia and the claimant an e-mail on 25 March 2020 entitled check in. He advised the claimant he was checking in to see if she was OK. This e-mail was insincere in light of the telephone conversation of 20 March;
- (3) Carl Melia attempted to gaslight the claimant by repeatedly trying to convince her that it's OK to not be OK. The claimant had to reiterate over and over again that she was fine and had no reason to not be OK.
- (4) Carl Melia proposed that the claimant to book 2.5 days per week to a timesheet code that would have rendered her non-productive and the claimant discovered it was only to be used by project managers.
- (5) Carl Melia offered the claimant to have up to 18 weeks parental leave which the claimant subsequently found out was unpaid.
- (6) Carl Melia tried to make the claimant take random annual leave. In particular in early December 2020 Carl Melia telephoned the claimant and tried to coerce her into taking specific annual leave dates that differ to the ones that she had already entered. Carl Melia attempted to coerce the claimant to cancel her scheduled annual leave.
- (7) The claimant explained that she had specific plans for the dates she had booked but Carl Melia kept trying and trying to convince her to

change the dates. He eventually gave up. The claimant believes that the reason behind this call was to prevent her from working whilst he was on annual leave.

- (8) Carl Melia took away the responsibility of quarterly KPI reporting from the claimant and then set her a goal relating to KPR reporting which he failed.
- (9) The claimant rejected Carl's request to redistribute her work to the end user projects team as they were severely lacking in work
- (10) the above conduct of Carl Melia was part of an attempt to remove the claimant from the business and make her look as close to non productive as possible so as to pave the way for Rosie wait to take her job. The claims alleges that Mark Kelly and Karen Hardwick were overseeing this attempt
- (11) Prior to starting his employment with the respondent Mark Kelly informed the claimant's line manager at the time Stuart Donovan that he was considering making her a business data analyst however once Mark Kelly met the claimant in person the opportunity never materialised
- (12) On 20 March 2020 Carl Melia telephoned the claimant with a range of options that would result in her taking time off work or making herself appear non productive and underutilised. The purpose of this call was to set the claimant up to fail and look like a worthless employee who was ripe for redundancy or dismissal
- (13) In a telephone call on Tuesday 31 March 2020 Carl Melia said to the claimant that due to lockdown all subcontractors have been let go "we wanted Rosie but Mark and I were shut down and told we had to have you". The claimant felt worthless and insecure as her manager and his manager had wanted to select a subcontractor to remain in employment in place of her who was an employee
- (14) Carl Melia and Mark Kelly made the claimant feel excluded during the weekly team chats
- (15) On 7 April 2020 Elaine Kelsey replied to an e-mail from Rosi Waite asking on the claimant's behalf for access to information. Elaine's response indicated that she was reluctant to give the claimant, a black employee, full access but she had no problem giving that access to Rosie Waite, who was a white subcontractor
- (16) Carl Melia and Mark Kelly attempted to starve the claimant of work to make her appear as a liability to the company rather than an asset
- (17) In particular the claimant relies on Carl Melia telling Peter Birch in April not to give her any work as she was extremely busy working for Trevor Catley. At the same time Carl Melia was telling Trevor Catley not to give the claimant any work as she was very busy working for Peter Birch. Carl Melia also asked Maddon Fernando if he wanted someone other than the claimant to support him
- (18) 30 March 2020 Carl Melia sent the claimant an e-mail asking her to input Christopher Davies timesheets. The claimant was asked to undertake the onerous task of backdating both her and Christopher Davies timesheets this would have resulted in doubling the claimant's workload whilst easing pressure on Christopher Davies

- (19) On 2nd April 2020 Carl Melia telephoned the claimant saying that Mark Kelly was asking “what she was smoking” as the figures she provided in the quarterly reports were incorrect and the claimant was being blamed. It subsequently transpired from the data the claimant was using to populate the report was correct and had been for some time but no apology was made to the claimant
- (20) on 1st April 2020 Carl Melia sent the claimant a text message at 1746 PM. This was outside of the claimant's contractual hours. She was requested to join the call that was in progress regarding costs alignment. The claimant felt she had no choice but to stop making dinner for the family and join the call. The claimant was able to work out what had gone wrong with Maddon Fernando. The claimant and Maddon Fernando were being blamed for errors in projects but the errors had in fact arisen because of financial postings by Andrew Webb the financial controller and cost changes made by Arvania Hawkings.
- (21) On 2 April 2020 Carl Melia sent the claimant a pointless time-consuming exercise purely to increase her workload.
- (22) The task the claimant was given was to review 235 missing projects.
- (23) This allegation is withdrawn
- (24) On 18 May 2020 Carl Melia emailed the claimant with a spreadsheet breakdown of her timesheets and asked for an explanation for absolutely everything including who gave her permission to complete her training on her learning link. The claimant says that this was exercise was designed to frustrate her by increasing her workload to catch her out.
- (25) Between 1 and 3 of July 2020 Carl Melia attempted to contact the claimant regarding her timesheets. He copied in Karen Hardwick to his last communication and this insinuated that the claimant had done something wrong
- (26) Between 1 and 3 of July 2020 Carl Melia attempted to contact the claimant regarding her timesheets. He copied in Karen Hardwick to his last communication and this insinuated that the claimant had done something wrong (this allegation is repeated)
- (27) On 3 July 2020 Carl Melia emailed the claimant and copied in the entire contract management team. He asked if the claimant had confirmed with her team members that they were OK with her being off on annual leave at such short notice. Another member of the team deemed the e-mail so degrading and humiliating the claimant that they reported Carl Melia on the red line.
- (28) On 3 June 2020 the claimant emailed Carl Melia and asked for a significantly longer 1 to 1 so that she could discuss her career development. A meeting was arranged for 10 July 2020 but rather than discuss the claimants career development the meeting changed into a performance management meeting.
- (29) The version of events that Carl Melia provided in writing after the meeting included lies.
- (30) On 15 July 2020 there was an e-mail exchange between the claimant and Carl Melia regarding an inversion invoice posting and an

e-mail from Abhishek Gupta. Carl Melia feigned ignorance during the e-mail exchange.

- (31) On 15 July 2020 Carl Melia sent an e-mail to the team regarding IACCM progress knowing full well he had told the claimant in March not to purchase the course (the claimant had in fact purchased the course on 29 June 2020 and so had disobeyed his telephone instruction in March not to do so)
- (32) Between 15 July 2020 and 5 August 2020 the claimant and Carl Melia had a weird and confusing e-mail exchange regarding the tender tracker
- (33) On 25 January 2021 Carl Melia gave the claimant a very poor performance review. Carl Melia's assessment of the claimant differed starkly to her own self-assessment and the feedback she had sought from colleagues and managers. It also differed from the performance reviews which had been conducted by Stuart Donovan in previous years the poor performance given by Carl Melia resulted in the claimant being given zero bonus for the first time in her employment with the respondent.
- (34) On 21 July 2021 the claimant e-mailed Carl Melia asking for a chat preceding a formal request for compressed hours. Even though it is clear from the claimant e-mail that she had read the policy Carl Melia provided a copy of the policy. This reply put the claimant off entirely from pursuing her request for compressed hours.
- (35) Carl Melia and Mark Kelly attempted to use the claimant's pregnancy and maternity leave to try and get rid of her. They decided that the claimant would either go to the HEC or if she stayed in the contract management team and performance management process would be used against her. The claimant says that Karen Hardwick was complicit in these actions.
- (36) On 20 August 2021 Carl Melia texted and emailed the claimant while she was on leave to try and trick her into taking a new role before she returned to work.
- (37) On 8 September 2021 Carl Melia phoned the claimant again and tried to coerce and convince her into taking the opportunity in the HEC. He did not mention a claimant resuming normal duties. On 7 September 2021 the claimant instant messaged Carl Melia on three occasions regarding getting her role back. He responded to say that she should not do anything work related until she had spoken to him.
- (38) On 13 September 2021 the claimant had a call with Carl Melia and asked him to arrange the handover of her role back to her. Carl Melia did not do so. Instead he reminded the claimant over and over that he was her line manager and can do as he pleased. He mocked the claimant by asking who she was telling to be stupid telling people what to do. He told the claimant that she wasn't a lawyer and said in a sarcastic tone I don't reveal where I get my information from either Gemma
- (39) On 13 September 2021 the claimant established during a telephone call with John Patton that the HEC restructure was untrue and it was just the claimant's support role that she had been doing since April 2019 repackaged as something new

- (40) On 13 September 2021 Carl Melia telephoned the claimant asking about her use of her personal e-mail address and her outlook calendar. He insinuated that the use of the claimant's personal e-mail address was a cybersecurity concern and that she had purposely restricted her calendar so that nobody could review it.
- (41) On 15 September 2021 Carl Melia emailed the claimant on two occasions regarding her personal e-mail address and her calendar. Both emails contained untruths to paint the claimant in a bad light.
- (42) On 22 September 21 on a virtual call to an audience of 35 people located throughout Europe Mark Kelly welcomed the claimant back to work by saying it's great to have diverse people kind of returning to work taking their rights. The claimant felt humiliated and intimidated. The mention of her kind of returning to work as a Freudian slip revealing the response intention to prevent her from fully returning to work.
- (43) On 23 September 2021 there was meant to be a handover of the claimant's role back to her from her maternity cover Rosi. However Rosi did not hand over all of the administrative duties that the claimant had prior to her maternity leave. In particular Rosi never handed Facebook administration back to the claimant. Carl Melia and Mark Kelly used the claimant's pregnancy and maternity leave to take Facebook or administration away from her and give it to Rosi.
- (44) The claimant's grievance hearing was a sham and her genuine concerns were overlooked and purposely diluted so as to not seem so serious or based on misunderstandings on the claimant's part.
- (45) Karen Hardwick was fully aware of Carl Melia and Mark Kelly's unlawful actions above but failed to prevent them and will protect the claimant instead she enabled them.
- (46) In role reviews on 31 March, 25 April and 20 May 2022 Carl Melia did not facilitate the claimant doing a masters or QS degree or getting training books or professional subscriptions. The claimant compares herself to Jennifer Moore, Chloe Bamford, Lisa Higgins and Harry Smith. The respondent agrees that the respondent did not facilitate the claimant doing a masters or QS degree but says the claimant did not request training books or professional subscriptions.
- (47) The claimant was invited to a disciplinary hearing regarding submission of timesheets on 9 June 2022 and given a written warning on 13 June 2022. The claimant compares herself to Andrew Garthwaite. The respondent disagrees that this happened.
- (48) The claimant was dismissed on 15 July 2022 for an alleged disciplinary offence. The respondent agrees that this happened.
- (c) was that treatment less favourable treatment i.e. did the respondent treat the claimant's alleged less favourably than it treated or would have treated others comparators in not materially different circumstances? The claimant relies on the comparators listed above and or hypothetical comparators.
- (d) If so was this because of the claimant's race.

Section 26 : Harassment related to race

- (a) The claimant's case in the alternative, is that since March 2020 Carl Melia, Mark Kelly and Karen Hardwick have harassed her

- (b) did the respondent do the things identified as less favourable treatment above
- (c) if so was this unwanted conduct
- (d) if so did it relate to the protected characteristic of race
- (e) did the conduct have the purpose or taking into account the claimants perception the other circumstances of the case and whether it is reasonable for the conduct to have that effect effect of violating the claimant's dignity or creating an intimidating hostile degrading humiliating or offensive environment for the claimant.

Section 27 : Victimisation

- (a) did the claimant do a protected act; the claimant relies upon the following :-
 - (i) submitting a grievance on 17 September 2021 the respondent accepts that the grievance raised a claim of race discrimination and it was a protected act.
 - (ii) Her first tribunal claim presented on 13 February 2022. The respondent accepts that this was a protected act
 - (iii) an e-mail to her manager Carl Melia on 10 June in which the claimant asked CM to stop treating her differently because she was black. The respondent denies this was a protected act on the basis that the allegation was in bad faith. Was the allegation made in bad faith under section 27 (3) of the Equality Act?

- (b) did the respondent subject the claimant to a detriment? The claimant relies on the following

In her first claim

- (1) Mark Kelly intimidated and humiliated the claimant on 22nd September 2021 on a virtual call to an audience of 35 people; he referred to the claimant as a diverse person taking her rights. The claimant understood he was referring to her being black and having had a baby. He also referred to the claimant kind of returning to work rather than fully returning to work.
- (2) The claimant has never been give him back her Facebook administration after returning from maternity leave on 6 September 2021. The handover was supposed to happen on 23 September 21 the respondent denies this

In her second claim

- (3) the claimant did not have the opportunity to agree goals with her manager which should have been done by February 2022. The respond agrees that there was a delay in goal setting for the claimant
- (4) the claimant was investigated for fraud after submitting expenses in the normal way and she was subjected to a face to face meeting about this on 23 March 2022. Other colleagues who had their expenses claims questioned were not subject to such an investigation. The respondent agrees that the claimant was investigated over an expenses claim and for apparently making a covert recording.
- (5) In role reviews on 31 March 25 April and 25 May 2022 Carl Melia tried to take aspects of her role away from the claimant; also gave

the claimant a task to do which was time consuming and pointless because it was automated i.e. POP3. The respondent does not agree with this

- (6) in the above role reviews CM did not facilitate the claimant doing a masters or QS degree or getting training books or professional subscriptions
 - (7) on 13 May 2022 Carl Melia retrospectively approved a day's holiday for the claimant on 3 May 2022. Because he had not approved it in time the claimant had worked that day but CM insisted that it was to be viewed as a days holiday. The respondent accept that this happened.
 - (8) On 27 May 2022 Carl Melia spoke to the claimant in a sarcastic and humiliating tone about the tender tracker excel spreadsheet in front of Sarah McGill. The respondent does not accept that this happened.
 - (9) The claimant was invited to a disciplinary hearing regarding submission of timesheets on 9 June 2022 and given a first written warning on 13 June 2022.
 - (10) On 10 June 2022 Carl Melia copied in Sarah McGill on an e-mail which the claimant found humiliating and degrading. The respondent does not accept that the e-mail was humiliating and degrading.
 - (11) On 10 June 2022 Carl Melia sent the claimant an e-mail inviting her to an informal counselling session relating to booking meetings which took place the following week. The respondent denies this.
 - (12) The claimant was dismissed on 15 July 2022 for an alleged disciplinary offence.
- (c) If so was this because the claimant did a protected act and all because the respondent believed the claimant had done or might do a protected act.

Pregnancy maternity discrimination section 18 of the Equality Act 2010

- (a) did the respondent treat the claimant unfavourably by doing the following things :
 - (1) Upon her return from maternity leave on 6 September 2021 the claimant was not allowed to return to the same job that she was doing previously
 - (2) The claimant asked Carl Melia on numerous occasion when she could have her job back but to no avail
 - (3) The claimant made Mark Kelly and Karen Hardwick aware that she had requested from Carl Melia her job back from Rosie wait who was her maternity cover. Mark Kelly replied advising about his awareness of changes and opportunities. Karen Hardwick never replied.
 - (4) The claimant's pregnancy maternity leave was used as an opportunity to remove her from the contract management team and to give her entire job and all the work associated with it to Rosi Waite. This was to pave the way for Rosi Waite to go from a subcontractor to an employee

- (5) On 8 September 21 Carl Melia phoned the claimant and tried to coerce and convince her into taking the opportunity in the HEC. He did not mention the claimant resuming normal duties
 - (6) Carl Melia instead outlined the positives of the claimant taking on the role in the HSE including permanently working from home, reporting to John Patton and her performance review of 2020 would be wiped and forgotten about.
 - (7) Carl Melia also emphasised the negatives of the claimant staying in her role in the contract management team which would include still having to report him and having to undergo a performance improvement plan
 - (8) On 13 September 2021 the claimant established during a telephone call with John Patton that the HSE restructure was untrue and it was just the claimant support role that she had been doing since April 2019 re packaged as something new
 - (9) On 10 September 2021 the claimant instant message Carl Meia on three occasions regarding getting her role back. He responded to say that she should not do anything work related until she had spoken to him
 - (10) Following the claimant's return from maternity leave Carl Melia informed the team to continue as if the claimant was still absent and as a result her colleagues did not want to get into trouble by giving her work to do. Therefore, following her return the claimant was not contacted with the usual frequency by the usual people.
 - (11) On 23 September 2021 there was meant to be a handover of the claimant's role back to her from her maternity cover Rosi Waite. However, Rosi Wait did not hand over all of the administrative duties that the claimant had prior to her maternity leave. In particular Rosi never handed Facebook administration back to the claimant. Carl Melia and Mark Kelly used the claimant's pregnancy and maternity leave to take Facebook administration away from her and give it to Rosie.
 - (12) Karen Hardwick was fully aware of Camellia and Mark Kelly's unlawful actions but failed to prevent them and instead enabled them.
- (b) did the unfavourable treatment take place in the protected period.
 - (c) If not did it implement a decision taken in the protected.
 - (d) What's the unfavourable treatment because of the pregnancy
 - (e) what's the unfavourable treatment because of an illness suffered as a result of the pregnancy
 - (f) what's the unfavourable treatment because the claimant was on compulsory maternity leave or the claimant was exercising or seeking to exercise or had exercised or sought to exercise the right to ordinary or additional maternity leave?

Remedy

- (a) if the claimant succeeds in whole or in part the tribunal will be concerned with issues of remedy and in particular if the claimant is awarded compensation and or damages will decide how much should be awarded
 - (i) if it is possible that the claimant would still have been dismissed at some relevant stage even if there had been no discrimination

- what reduction if any should be made to any ward as a result; see **Chagger and Abbey National PLC 2010 ICR 397**
- (ii) did the respondent unreasonably fail to comply with the HS code of practise on disciplinary proceedings? If so would it be just and equitable in all the circumstances to increase any compensatory award and if so by what percentage up to a maximum of 25% pursuant to section 207A of the Trade Union Labour Relations Consolidation Act 1992, section 207A. The claimant says that a further act of misconduct should normally result in a final warning not dismissal.

The hearing

4. The Tribunal was provided with bundle of 1428 pages of documents; a transcript bundle of 391 pages of covertly recorded conversations by the claimant, of discussions between herself and the respondent between 8 September 2021 and December 2021. The claimant had agreed that the transcript #4 pages 52 to 53 should be removed but initially objected to the removal by the respondent of transcript pages 63 to 64. The Tribunal obtained photocopies of transcripts and Mr Frew considered overnight as to whether the respondent objected to its inclusion within the transcript bundle for the Tribunal to read. Ultimately the respondent did not object to its inclusion, deeming it helpful to the respondent's case.
5. The claimant made an application for her training records to be included. The claimant noted in the witness statement of Mr Melia he had referred at paragraph page 56 to the claimant undertaking training and in the course of the investigation into the claimant's grievance at page 852 had referred to a significant amount of training undertaken by the claimant. The claimant disputed the amount of training and stated this was another example of the way that Mr. Melia lied about her. She had made a number of allegations of race discrimination against Mr. Melia. The claimant requested that the respondent disclose her training records which are in contradiction to the amount of training Mr. Melia asserted she had undertaken. The respondent was asked to find these and provide them to the claimant.
6. The Tribunal was assisted by the parties at the commencement of the hearing by identifying particular pages relevant to the allegations and conceding that certain included policies which were not relevant to the issues.
7. The Tribunal determined to deal with liability issue first taking to account the number of allegations which had to be determined within the timescale (48 direct race discrimination; 48 harassment related to race allegations; 12 allegations of victimisation and 12 allegations or pregnancy maternity discrimination; the amount of documentary material; and the number of witnesses.
8. The Tribunal agreed to the claimant's request to take breaks in the hearing at any time if she needed to as a reasonable adjustment.
9. From day 2 both members were working remotely for personal reasons. The Tribunal suggested that a break should be taken every hour for 10 minutes. Again, it was re-iterated if the claimant required to leave the Tribunal room for a comfort break she should do so.
10. The respondent provided the claimant's training records on day 2. Further it provided a counselling note of the claimant's colleague, Mr. Fernando.

11. The claimant objected to Mr. Hull giving evidence via CVP. The Tribunal requested that the witness order be varied so that Mr. Hull could attend on Tuesday and avoid any rail strike action.
12. On day 3 the Tribunal listened to the recording of the claimant's conversation with her colleague on 13 September 2021.
13. On day 3 the Tribunal was very concerned about the claimant's health. She became very distressed. She was given a break and there was a further longer lunch break provided to also accommodate a member's personal appointment. On the afternoon of day 3 the claimant became very distressed again and disclosed that she had been diagnosed with depression and prescribed medication. Unfortunately, the medication was not available at present. Due to the distress of the claimant, the Tribunal determined to postpone the case until the next morning to see how the claimant felt noting that the Tribunal had an obligation to ensure that a party can participate in the trial and have a fair hearing. The claimant had been accompanied by her mother this week. The Judge requested that someone accompany the claimant on day 4. Further the Judge made an arrangement that a member of the Tribunal clerking team trained in mental health could act as a support for the claimant.
14. Further disclosure was provided by the respondent which the claimant did not object to. The claimant requested the mobile telephone records of Mr. Melia but the respondent said that these were not available. The claimant raised the issue of third party disclosure but the Tribunal considered it would be unlikely records could be obtained in the timescale. The claimant could cross examine Mr. Melia about the conversation and the inability to obtain his telephone records, if she wished to do so.
15. The Tribunal met for deliberations on 12 April 2024 but could not conclude these on the day. They were only able to resume their deliberations on 26 June 2024 because of annual leave and other Tribunal commitments on multi day hearings.

Facts

16. The claimant commenced employment with the respondent on 4 September 2017 as a contract's administrator (grade 4). The claimant says that she was an administrator/trainee quantity surveyor and requested the Tribunal take into account the job description attached to the advert for the job which included reference to quantity surveyor training. The respondent disputed the claimant was a quantity surveyor stating that the claimant was merely relying in her evidence upon a job advert. The Tribunal determined that the claimant was actually employed in accordance with the offer letter (page 226) which makes express reference to the job of contracts administrator. However, the Tribunal determined that it was likely on the balance of probabilities that the respondent would provide an opportunity to the claimant to obtain a quantity surveyor's qualifications. The Tribunal found this corroborated by the claimant at page 248 seeking with the consent of her manager a quantity surveyor's course and by reference of the claimant in her performance review of quantity surveyor training.
17. The claimant worked mainly in the contracts management division which acts as a support function for the wider business. The claimant was a home worker and did not travel to the respondent's office in London or Maidenhead. She was initially managed by Mr. Stuart Donovan. The

claimant took maternity leave in 2019 and returned to the business in April 2019. During her time away from the business, the respondent hired a contract worker, Rosi Waite a white female.

18. Mark Kelly who had acted as a contractor for November and December 2019 became the director of Europe on 2 January 2020. Mr. Melia was recruited in about January 2020 as a contract manager at grade 8. In March 2020 he became the Director of Europe. He started to line manage the claimant in or about February 2020.

Mr. Donovan's performance review of claimant

19. Mr. Donovan's performance review of the claimant in 2018 (page 236 to 244) was positive. He left the business in about April 2020. On 11 March 2020 (page 329) Mr. Donovan was putting together an induction manual for the contract management community and wished to include a section on the completion of timesheets. Mr Donovan agreed with Mr. Melia's suggestion that the exercise is not so much about where time is booked but ensuring that time is booked; he suggested making reference to say that project codes and other cost codes would be available from your manager. There was a problem for the claimant for booking her time for a particular project because booking her time to a project could make a project more expensive than costed. Inevitably the claimant did encounter problems with managers not wishing to provide her with the charge out code for a project so to keep the costs of their projects as low as possible. This had the risk of giving the appearance that she was non productive.

2020

20. On 2 January 2020 (page 274) Mark Kelly requested the claimant to assist him with the entire Europe KPI reporting and the claimant willingly took on this opportunity.

Harassment complaint

21. In the early part of 2020, the claimant contacted Karen Hardwick about her treatment by a male colleague. Karen Hardwick was very helpful and supportive of the claimant. She suggested that the claimant follow the formal bullying and harassment procedure. The claimant determined eventually not to proceed with it.

Leeds February 2020 Meeting

22. At a team meeting held in Leeds in February 2020 Mr. Kelly informed all employees to complete timesheets. Mr. Kelly met the claimant, and they discussed the IACCM course. The claimant expressed her interest in doing the course but due to the high cost under the management of Mr. Donovan only a few people were given the opportunity to study for it. Mr. Kelly said under his leadership the course will be available to everyone. On 18 February 2020 (page 343) the claimant had said that she discussed with Mr. Kelly freeing up some time so that she had capacity to commence and complete the course IACCM; she said she would be in a better position to complete the course within a reasonable time

Use of non-productive codes

23. In March 2020, Mr. Catley enquired with Mr. Donovan whether finance would be happy for him to use non-productive codes for him to log his time against (see page 330A). Mr. Donovan was happy to agree to this stating that the exercise was not so much about where time is booked but that the time is booked. He suggested to Mr. Catley making reference to project codes and other cost codes available from his manager (p331).

Reminder of Time Sheets

24. On 3 March 2020 page 362 Mr Melia emailed the claimant reminding her that on 12 February 2020 at the contract management meeting he had asked all members of the team required to submit a timesheet by the business to do so from that meeting date which included missing timesheets. He stated that he could not permit non completion of the time sheets to continue. He stated the timely submission of timesheets allows the business to properly allocate expended resource costs and monitor those costs against the budget. It also allows the company to monitor statutory requirements under the working time directive; allows him to manage the team resource and assist justification for additional resources when required. On 4 March 2020 the claimant stated her account was locked as soon as it got live again she would update her timesheets (page 361).
25. By email dated 24 March 2020 (page 335) Mr. Kelly reminded employees about the issue of the completion of timesheets which was discussed at the Leeds Meeting. He informed the team that the failure of people to complete timesheets was significantly undermining the function in the UK. He further stated that timesheets are not an optional thing, they are mandatory and where they are not being completed it creates a major issue.
26. On 25 March 2020 page 360, Mr Melia asked the claimant whether the issue with the Lotus notes had got resolved. He inquired whether the timesheets now had been inputted into the system. The claimant responded to Mr Melia (page 359) that she did get it resolved and had inputted all the information for January at that time she was working through February and hoped to be fully up to date by the end of the month. On 2 April 2020 Mr. Melia contacted the claimant to state that her timesheets had not been showing in the finance system. He said Andy Webb had told him that there may be an issue and suggested Ian LePage may be able to assist to see if they need authorising or pushing through somehow he asked the claimant to advise on this.
27. On 26 March 2020 Chris Davies had been having an issue with completing his time sheets. On 30 March 2020 Mr. Melia determined that as an interim measure Mr. Davies should send his times to the claimant for inputting (page 339). The claimant contacted Mr. Bhatt who resolved the issue (page 340) by performing the password digest on Mr. Davies Lotus notes account so he could access the information to complete his timesheets.
28. The claimant responded on 3 April 2020 (at page 370) to say that she had backdated her timesheets and had completed the Facebook handover with Rosi Waite. On 12 April 2020 the weekly feedback report (page 371) flagged all backdated timesheets were approved by the administrator and that all timesheet and expenses had been completed.

Welfare of the claimant

29. On 25 March 2020 p 336 Mr. Melia contacted the claimant to see if she was ok. The claimant replied the next day to say she had been better and she would call Mr. Melia after the team catch up the following day.
30. On 25 March 2020 Mr. Melia e-mailed the claimant (page 336) checking to see if the claimant was ok. The claimant responded on 26 March 2020 to say I've been better if I can I will call you after the team catch up call tomorrow if that's OK.
31. Mr. Melia proposed that the claimant book 2.5 days per week to a timesheet code. The claimant believed that would have rendered her non-productive

and the claimant discovered it was only to be used by project managers (see page 377).

32. Mr. Melia offered the claimant to have up to 18 weeks parental leave (at page 377). Further Mr Melia tried to make the claimant take random annual leave in particular in early December 2020, Mr. Melia telephoned the claimant and tried to coerce her into taking specific annual leave dates that differed to the ones that she had already entered. Mr. Melia attempted to coerce the claimant to cancel her scheduled annual leave. The claimant explained she had specific plans for the date she had booked but Mr Melia kept trying and trying to convince her to change the dates.
33. On 20 April 2020 (page 374). Mr. Melia had set up a well-being meeting which the claimant accepted on 17 April 2020. The purpose of the meeting was to discuss well-being and work balance. On 18 April (page 375) the claimant declined the meeting. On 21 April 2020 (page 377) the claimant contacted Karen Hardwick to explain she declined the meeting with Mr. Melia. She described on April 17, she received a visit from the police regarding the welfare of her 19 month year old son who was seen on the Juliet balcony. The claimant reassured the officer that her child was safe and the policeman left. She joined the remote meeting with Mr Melia slightly late and slightly flustered and explained what had gone on. She was genuinely searching for reasons as to why Mr Melia was concerned for her well-being she said that she didn't need to book 2.5 days per week off; she did not need to take parental leave; she did not take need to take any annual leave for the foreseeable but she would ask if she did I'm acutely aware that the EUP team are severely lacking in work but the claimant did not need to have any of the work we distributed especially as she wished to remain as close to 100% productive as possible if things became unmanageable she would let Mr Melia know she knows where to go if she needed help. Karen Hardwick responded to the claimant on 22 April (page 378) that she had suggested to Mr. Melia that a well-being meeting be held with the claimant following the claimant being upset in February; appearing stressed at a team meeting on 20 March and upset on 17 April. She stated although the claimant did not believe the meeting was necessary that she allowed Mr. Melia to set out why he was concerned. The claimant declined the meeting and said in February her son had been admitted to hospital so she was upset on 20 March on the team meeting having heard the schools were going to close; ironically she said "I'm literally having palpitations and turning grey thinking about how next week is going to pan out with my little boy bouncing around". The claimant said she didn't want to appear insubordinate or disruptive but was not keen to have a further discussion about her well-being with Mr Melia. She was fine; his concerns were unjustified and Karen Hardwick confirmed at the claimant's request the meeting would not be held but the door remained open to talk to Mr Melia or herself if she had any future concerns.

Mr. Melia's management style

34. There was a difference in line management style between Mr. Donovan and Mr. Melia. Mr. Stuart Donovan's line management of the claimant was a more hands off style. Mr. Melia was a very much hands on and interventionist manager and he did tend to micro manage. Mr. Donovan did request the claimant to start a project/work tracker of which she made no

complaint. Mr. Melia also requested the claimant to complete this. It was completed by the claimant until 25 March 2020 and then no longer.

35. On 20 March 2020 Mr. Melia telephoned the claimant and ordered her not to purchase the IACCM course because it was too expensive for her to pay for without her Amex card. The claimant's AMEX card had expired. On 30 March 2020 page 343 Dimitry Peston stated that as the IACCM certification for the team invoice was still pending the respondent needed to correct individual goal plans for 2020 since the three months has passed and "probably we need to move of course certificate for people to the next year". Mr. Melia had prepared a table on 17 February 2020 indicating that the claimant was a practitioner "still in progress".

Instructions to claimant

36. On 27 March 2020 (page 341) Mark Kelly requested Mr. Melia and the claimant to pull together January and February 2020 KPI reporting. Mr. Melia contacted the claimant on 27 March and requested her to put the report together by next Tuesday afternoon. The claimant worked on the report and sent it to Mr. Melia on 31 March at 7.16 a.m. Mr. Melia raised some queries about the report and the claimant amended it and sent it back on 31 March 2020 at 11.22 a.m. (page 342). Mr. Melia sent further queries to the claimant on 2 April 2020.
37. On 2 April 2020 the claimant completed some work for Mr. Melia P12 file for BMS. She asked Mr. Melia to have a look at the latest version; she had doubts whether it was correct.
38. On 2 April 2020 (page 364) Mr. Melia emailed the claimant about quarter 1 of the 2020 KPI report quarter 4 of 2019 to quarter 1 of 2020. He attached a print out showing 235 projects "from the data combined tab". He noted that quarter 4 of 2019 had data for example revenue and costs but in quarter 1 of 2020 their data is no longer there. He stated he could be missing something; there could be a simple explanation but this abstracted data seemed unusual. He wanted the claimant to look into this for him. The claimant completed that piece of work at 5.54 a.m. on 14 April 2020 by reviewing 235 projects (page 365). The claimant summarised that the majority of the projects were now closed. She recognised quite a few of the projects that she closed in quarter one. A few projects are TECO and Andrew Webb's period 2 report only lists REL status. She further stated she had commented on the lines where although there is in fact data some or all of it is missing from Andrew's period 2 report. This was an extensive piece of work for the claimant which would have been readily available to Mr. Melia had he simply ran a report. Mr Melia did not ever comment or thank the claimant for conducting this significant piece of work.
39. On 12 May 2020 (page 388) Mr Melia asked the claimant to update the KPI report to include the March data search to complete quarter one summary. He apologised to the claimant for dropping it on her, but Mr. Kelly only asked for the update this morning and wants it by Thursday. Mr Melia asked if the claimant could get it back by Wednesday to him. The claimant said she would treat it as a top priority and get it done. The claimant was in contact with Mr Webb who responded that he hadn't been able to run the report for the past couple of months due to an issue he said he could run the P3 numbers but the CR and therefore RTL figures will not be correct. The claimant informed Mr. Melia about this but stated that she would take a look at the report when Mr Webb runs it. The claimant chased up in the report

with Mr Webb on 13 May 2020 and on 18 May 2020 requesting to run the P3. 18 May 2020 Mr Melia requested the claimant produced the people reported the same manner as the P3 would have been given. The claimant chased Mr Webb to provide the P4 figures and kept Mr Melia up to speed as to her progress. On 18 May 2020 (page 396) although Mr Webb confirmed he should be able to get the P4 figures later that day to the claimant, he later informed the claimant he was having difficulty obtaining the report.

Access to confidential information

40. On 2 of April 2020, Rosi Waite e-mailed Elaine Kelcey (copying in the claimant) stating that her contract had been terminated with effect from 3 of April and she was in the process of handing over some of her responsibilities to Gemma. She raised that Gemma would need UK audit permissions as the same as she had during her contract with the respondent. Rosi requested Elaine Kelsey to inform the claimant and her as to who they needed to speak to, to obtain it.
41. On 3 April 2020 (page 355) Andrew Webb requested Elaine Kelcey and Emma Finch to provide the access to the claimant. By 7 April 2020 this still have not been actioned. The claimant raised it with Andrew Webb who invited the claimant to chase it up directly with Elaine and Emma. Mr. Melia chased this up on the claimant's behalf later that day (see page 356A). Elaine Kelcey responded that she was reluctant to give someone access to the whole of the UK because of GDPR regulation and the need to keep this type of data as restricted access. She further stated she knew that the previous person had access but the GDPR team have had words with her about being more careful and so I need to challenge this and consider if there is an alternative way to get you what you need but keep data as secure as possible. She inquired how many people to expenses codes did Gemma need to view ? Mr Webb responded (at page 357) he understood the issues with GDPR stating the list of individuals is quite long as it covers all of the Facebook programme and DLR explained the business case for this, is that contracts with Facebook on the DSI programme are based on a GMP which means that in order to get paid we have to provide every single expense receipt. This is the process Rosi had built up over the last 12 to 18 months for which Gemma will now cover as Rosi has been let go.
42. Mr. Melia confirmed there were 30 individuals that needed the claimant to be able to access and that the claimant needs to grab each and every relevant receipt so that the respondent can claim its value back from our customers Facebook and DLR (page 357A). Elaine Kelcey stated it was possible to restrict the access to the claimant to just 30 employees she needed to access by giving delegate access. Alternatively, the claimant could be given access to all employee accounts namely 2000 as a global access. Mr Melia contacted the claimant on 8 April 2020 (at page 358) to state that finance will not allow the claimant to have access to the overall database. He provided the claimant with a process that she had to undertake with each member for Facebook and DLR so to permit the claimant to access to their concor account. He stated this appears to be now the only way that the expenses grab can be undertaken for customer billing.

Meeting with Mr. Melia

43. On 14 May 2020 (page 395) Mr Melia contacted the claimant to put a meeting in the diary to have a monthly 1 to 1 discussion on workload and goal setting etc.

Further queries about timesheets

44. On 18 May 2020 (page 400) Mr Melia e-mailed the claimant about the timesheet analysis of the period March to April 2020 stating that there is some non-productive time booked. He had inserted comments into the timesheet colour coded and requested her comments. He further stated that the last week of the period week commencing 24 April 2020 *appeared to not have any timesheet data can you please confirm that this timesheet was submitted on time*. On 1 July 2020 (page 412) Mr. Melia contacted the claimant to confirm her timesheets were up to date.
45. On 2 July 2020 Mr. Melia said he'd left a voicemail for the claimant and an e-mail that she had not replied to; he asked the claimant to get in touch. At page 1328 the claimant said she would do. On 2 July 2020 (page 415) Mr. Melia e-mailed the claimant at 13.51 stating he had tried to attempt to speak to the claimant regarding her timesheet since yesterday. He said there appears to be no timesheets completed and submitted by the claimant since the week of 4 May 2020 he asked the claimant to explain this. messaged the claimant to confirm that her timesheets were up to date. At 18.23 Mr Melia asked the claimant to confirm that her timesheets were up to date. The claimant confirmed that they were up to date and the claimant confirmed her timesheets were up to date and submitted on 3 July 2020 at page 413.
46. By e-mail dated 6 July 2020 (page 423) the claimant emailed Mr Melia and Karen Hardwick about timesheets missing from 4 May 2020 stating the last time she submitted timesheets was on 19 May 2020 the day after she received Mr. Melia's e-mail dated 18 May 2020. She stated they had spoken via Skype on 19 May when the claimant outlined the dilemma she faced each time she attempted to complete a timesheet explaining a lot of her work is for the hub execution centre (HEC) which she did not have access to a cost code of theirs to book her time. She reminded Mr. Melia of a telephone conversation they previously had when she told him that Trevor Catley advised her to speak to Mr. Melia and seek his approval which Mr. Melia gave so to mirror what Mr. Catley does; for the work the claimant does on behalf of Trevor and power systems; the claimant is to book her time to non-productive administration and any work the claimant does on behalf of Maddon and digital energy she is to book her time non productive time management/supervisor. She stated she remembered Mr. Melia agreeing to this method of time booking especially as Trevor was in a similar situation as there didn't seem to be any other work around. The claimant said she had mentioned that Stuart often used to say that the other be used want the support but don't want to pay for it. During the conversation on 19 May Mr. Melia had suggested the claimant approached senior HEC management in terms of Anthony Garnett John Patton and Harry Smith to ask for cost codes to book her time to very uncomfortable with this idea The claimant advised that during various project reviews since we met as a team in Leeds in February 2020 I've mentioned to several HCC PMS my dilemma. The claimant went on to say Mr. Melia finally suggested over book time on projects where there is budget. The claimant advised she did not like the idea of booking out to a project where all she had been asked to do is to

raise an invoice with SAP as its most troublesome takes at most 30 minutes; having discussed and digested the above at length we mutually agree that as a team we ideally need a centralised pot from which the entire contract management team can draw down; an idea often mentioned by Stuart in the past and as recently as last Thursday by you in our team call. We ended the call agreeing that with major restructuring impending idiosyncrasy such as this will be ironed out. She further stated it is purely fear of losing my job my livelihood because of not being able to cost my time accurately why I didn't submit my team timesheets for eight weeks; the ostrich effect in addition to fear of losing my job due to perceived non productivity The claimant said she also feared receiving another request from Mr. Melia asking her to provide comments to queries on a summary data set of my timesheet booking namely having to provide a breakdown of X hours of non productive administration and staff meetings as well as who authorised her to use them. The claimant had completed her timesheets using non-productive time codes. In order to not fall behind again on her time sheets and until under until I receive authorisation and capability within Lotus notes to book her time against cost centres (sets out a number of codes..) the claimant said she had no other option but to continue to utilise nonproductive codes. The claimant stated that she needed these cost codes to be able to book her time so that her overheads can be recovered. The claimant referenced an e-mail sent by Mr. Melia from the evening before; the claimant missed the phone call from him 2 hours 34 minutes into the start of her working day; she said "you don't need you don't send out a search party e-mail to my colleagues asking if they have heard from me and if so how did I sound I cannot understand why you would need to send welfare check to my team at the very least not copy me in I believe such communications carry negative connotations. Just to confirm I'm faring no better and worse than anybody else given the current global situations".

47. In response on 6 July 2020 Mr Melia convened a meeting after the claimant's return from leave. He also inquired as to whether the claimant having copied in Karen Hardwick to the e-mail, would like Karen to be part of the proposed meeting. The claimant responded that she had not copied in Karen. She replied to all and copied her personal e-mail address. She did not believe Karen's presence in the proposed meeting was necessary. Following this exchange the claimant contacted Karen Hardwick requesting a dignity at work policy or something similar.

Request for annual leave approval

48. On 3 July 2020 (page 416) the claimant requested annual leave for next week stating she knew it was short notice but if there was any chance it could be approved. Mr. Melia (page 417) emailed the claimant copying in Peter Birch, Maddon Fernando, Christopher Davies and Trevor Catley stating "*can you please detail what you have to hand over if you are on leave next week and what coverage will have to be put in place during this time for those activities that shall be required. Also have you confirmed with the CMT member who you support for example Peter birch for Facebook and Chris Davies for pre sales that they are OK with you being off on annual leave at such short notice*". The claimant responded (page 417A) stating nothing needs handing over *! I haven't checked with Pete or Chris as Pete and I have already discussed workload this week for next week and if it's still*

on going ahead I'll be dialling into the M in each court with Chris. In terms of one voicing I'm this is the usual 8th of the month request from Gavin Lilly which just so happens to be the day of my return should you grant my request. Mr Melia responded to this that he could only see 2 days booked into the ADP requesting leave next week these being 6 and 7 July 2020. He stated a number of retrospective annual leave days going back as far as January 2020 that have been requested for my approval earlier today that he wasn't aware of until reviewing them within ADP (page 417B).

Meeting with Mr. Melia

49. By e-mail dated 3 July 2020 (page 418) the claimant requested a significantly longer meeting to the meeting on 11 June to discuss career development and evolution from a contracts administrator to the trainee quantity surveyor that "I am supposed to be as per my job description". The claimant wished to discuss her workload and goal setting as per the meeting invite. Mr. Melia said he would respond in due course to the e-mail (page 418A). The claimant asked Mr. Melia to confirm he had sorted out her access to BFO as part of her development (page 419). This followed messaging in March 2020 when Mr. Melia said he gets sorted on being fair as part of the claimants development page 419A. Mr. Melia followed this up with Christopher Davies on the same date. The claimant passed her job description to Mr Melia (page 421).

Meeting 10 July 2020

50. A telephone discussion took place on 10 July 2020 between the claimant and Mr Melia. Mr. Melia had set up the meeting to discuss the claimant's ongoing performance. The claimant left the meeting after 12 minutes. The claimant's understanding was that the meeting was about setting goals and discussing opportunities to undertake a QS role. Following the meeting Mr. Melia wrote to the claimant stating that the claimant did not wish to engage in the performance improvement plan. Mr. Melia identified areas for improvement namely completion of timesheets; the claimant had not completed timesheets for 2 months; the retrospective booking of annual leave; the failure to update the workload tracker; failure to submit expenses for approval; failure to update the tender tracker. He stated "*despite wishing to engage you into constructive dialogue on how we work to overcome this underperformance you chose to end the call with me. I am disappointed that you choose to take this action and not engage with me on the points raised and my wish to reach out to you with an amicable resolution.*" The claimant responded in red text on 13 July 2020 (page 430 to 432). The claimant stated she believed that the meeting was to discuss her career development and evolution from a contracts administrator to a training quality surveyor as per her job description. She stated that there was no mention implementing a performance improvement plan and she said she was totally blindsided. The claimant said that she broke down in the meeting saying that she didn't believe that she fitted into the dream team that Mr Melia and Mr. Kelly were trying to build. The claimant said that she was unable to breathe and therefore had to go and ended the call. She stated that the performance improvement plan was going a bit fast for her and she realised that it was going to be formal and that she wanted to speak to her union. She explained she declined to have Karen on the call because she genuinely believed the

call was going to be about career training and development. In respect of the aspects of performance, she stated that she referenced her e-mail 6 July and Mr. Melia had said that he was unaware until the receipt of her e-mail about the need of cost codes. She explained the annual leave reflected the time away from her desk tending to her son where "I couldn't make it up later in the evening I tried to explain that no point was I taking half day blocks just 10 minutes here 15 minutes there". She said that Mr. Melia still hasn't offered her alternatives or compassionate leave. She said Mr. Melia said she could book 2.5 days per week to the NP11 waiting non chargeable time code on a timesheet. This is exclusively for project managers who couldn't get on site due to COVID. Mr. Melia offered the claimant parental leave but with the lockdown yet to commence and not even being able to imagine how everything would transpire she said she didn't really see how it would work in terms of a set day or time. She said she generally thought half day annual leave here or there to cover the lost time would serve the same purpose as parental leave. The workload tracker commenced in April 2019 as a tool solely for Trevor Catley. The claimant had offered to send Mr Melia a link to the tracker; it was not up to date in March 2020. She had not felt any undue pressure to update it for fear of any consequences. She said that she had explained that she had significantly asked around and no other contracts or project administrator or anybody else in the team or company has to write down everything they do in detail; every e-mail; telephone or call request; who's it from; the date received; the requested task; her actions on the day. She stated that she completed the actions and the current status whether open or closed or in progress or on hold. The claimant said she felt she was not trusted to carry out a full day's work and was it because she was black ? She looked around at everybody else and her team who do not have to document everything that they do they are white and Asian. In respect of expenses, the claimant said she advised the inputting of her expenses were indeed a priority for the following week whenever stated. However actual work parties took precedence and always will respect to the tender tracker. The claimant advised it is always been difficult getting Chris, Madden and Stephen to send her their trackers. She also went to say "I do in fact wish to engage with the companies on how to overcome any genuine underperformance that you can bring to my attention I truly do not believe the four points above are measurable areas of underperformance". She just said that the GS workload tracker she believes she's had to complete "because I am black, a female and a mother and I am not trusted". She further stated I'm currently in the first trimester of pregnancy I had to end the call and bid you goodbye as I'm beginning to hyperventilate I could barely talk or breathe and I could feel my blood pressure soaring for my health and the health of my unborn child I could not continue listening to you.

Mr. Melia's Performance Review of claimant

51. Mr. Melia's performance review of the claimant was negative (see page 257 to 272). This compared to the claimant's assessment of herself as a high performer. Mr. Melia graded the claimant as an under performer stating "*I and others in the CM team will work with Gemma to develop areas such as confidence and skills to be a success in her role and take this forward into 2022. One area of development will be the fundamentals of being an employee and that is the completion of admin tasks such as timesheets and*

- expense claims holiday leave requests -whilst Gemma was has made some progress in 2020 there are still significant areas of consistency needed.”*
52. Mr. Melia’s assessment of the claimant was in stark contrast to Peter Warren’s comments at page 257. Mr. Warren described the claimant *“hidden star within the business. She clearly has bags of potential, a fantastic attitude to her work and a keenness to develop her career. She is was utterly reliable and always responsive we can both see that due to matters outside Gemma's control it is difficult for her to get support from some project managers to allow her to book time to their projects despite her doing work for them resulting in her utilisation being below target this is absolutely not Gemma's fault and in my opinion it should be a leadership matter to resolve.”* In respect of KPI’s, Mr. Melia stated the claimant was to *“provide consolidated inputs for all KPI inputs for area of responsibility/support all KPI reporting and tracking efforts.”* The claimant agreed with Mr. Melia she was partially on target but stated she *“did not understand how to achieve the goal”*. Mr Melia stated that Gemma *needs to request clarity on how she could attain the goal.*
53. In respect of attendance and contribution to the contract management regional global calls Mr Melia stated that the claimant *“does not actively participate as a member nor had she put herself forward to be part of this strategic plan 2020 initiatives outside those requests made to the entire contract management community for example surveys”*. In respect of pre-sales support it was stated by Mr Melia that the claimant was *“partially on target but there was still room for improvement before he thinks Gemma can take the role on if the role remains in contract management and run with it herself. Mr Melia stated as well at the end of 2020 the claimant had not attained yet the completion of the pre-sales training”*. In respect of achieving the appropriate level of IACCM certification, the claimant stated that she *was not aware that this was an actual development goal until very late in the year.* Mr Melia stated that the claimant was *significantly below target* stating that Gemma had indicated that she was starting her IACCM in March 2020 (see the e-mail dated 20 March 2020). This was followed up including a further e-mail in July 2020. *Gemma has started her IACCM certification course in late 2020 this has been the prime inhibitor in her ability to meet the target in 2020”* (see page 266). In respect of core values, putting the customer first, Mr. Melia stated *“..moving forward Gemma should be looking to develop her interaction in a way that gives her “customer” what they need rather than what the answer that they want from Gemma (see page 267).* He further stated that the claimant needed to be more proactive. In respect of the criteria of learn every day, Mr. Melia stated *“whilst Gemma has demonstrated she likes to learn the application of that learning is a vital part of gaining the education in the first instance. Gemma was asked and agreed to undertake a team talk on an IACCM COVID-19 course she attended she and I discussed her concerns on confidence and this was going to be in a safe team environment and Gemma was left to come back to me and say when her slide deck was ready to present this was not followed by Gemma this was disappointing as this would have been a great learning opportunity for Gemma to develop this is a development point for 2021”*.
54. The claimant identified herself that she was significantly below target in respect of a QS course stating that due to maternity leave she had been unable to enrol on any course. She was instructed by Mark Kelly to identify a

course with a start date of September 2020 and call the institution for enrolment information (page 248).

55. On 13 July 2020, the claimant requested colleagues Fernando Maddon and Christopher Davies to send her weekly tender trackers as far back as 24 January 2020. Mr. Maddon replied that he had not reviewed a tender since then and he wasn't sure why he no longer receives tenders to review (page 434). The claimant emailed Mr Melia on 15 July 2020 coping in Karen Hardwick and Mark Kelly (page 443) stating that Maddon had said the last tender he reviewed was for Stuart in January 2020 and that Christopher Davies hasn't completed a tender tracker since March; he discussed this with you in March with a view to incorporating his weekly tender tracker into his weekly feedback report that he sends you every Friday. We concluded up with Madden not having the need to complete a tender tracker since January 2020 increase sending them directly to you as of March 2020 as per your discussion with him we are unsure of what I can collate and upload she asked do you still need Chris to send me his tender tracker for me to upload to the box.
56. On 14 July 2020 (page 437) the claimant informed Mr. Melia that she had requested bFO access and bFO knowledge training. She stated that the access requires no approval but the ticket for the knowledge training says they'll get back to me soon. She informed Mr. Melia that she will let him know when she has full access and confirm whether training is on line or on certain dates. Mr. Melia responded on 15 July (page 437A) asking whether the claimant had currently Bfo access; if not have 2929 it sent you the online training that you need to complete so they can give you access; he had discussed with Chris Davies BFO and consider that learning by actively using BFO was the way that he and I learned best to use it so on the job monitoring by Chris would be great way for the claimant to also pick up how to use BFO and he was not aware of the knowledge training the claimant refer to could she kindly set out what the content is over and above mentioned online training content and the job mentoring. He said that Chris Davies and he would be happy to escalate as necessary for the claimant to join the training as soon as possible if it is essential to being able to gain access to BFO. The claimant responded "I still do not have BFO access"; she stated that 2929 have not sent the claimant the online training. Further she didn't know what the BFO knowledge is either; she saw it in the dropdown when trying to arrange the BFO access and assumed it was the associated training course. She now heartily trusted that what you and Chris have discussed in terms of her learning alongside the MLL online training are essential to what I need to get up and running. She said Chris was also going to give her BFO crash course as soon as he receives access she said if she's not contacted by 10:00 tomorrow morning I'll definitely take you up on the offer of escalating on my behalf in order to gain BFO access. On 19 August 2020 the claimant had received BFO access and thanked Mr. Melia and Mr. Davies for their help (page 479).

Invoice

57. On 15 July 2020 page 440A Mr Melia emailed the claimant concerning number invoice 99333368, asking why has a credit note been issued. He stated he was never expressly told that the project was a solution centre project. He also asked has there been a replacement invoice now issued? does this affect the reported June figures? was the credit note issued the

same day as the corrected invoice was raised for example both 30 June 2020. The claimant responded in red text that the invoice was raised in error and wants to post it. However, it actually needs reversing in order for him to do so he'll need the credit note; yes a replacement invoice was raised immediately after with no effect on the reported June figures and the date on the credit note indicates that it was generated on 30 June 2020 the e-mail trail reveals on 14 July requested Maddon to assist concerning the invoice 993333368 (page 439). The claimant noted on 15 July that the invoice had been raised in error and attached the associated credit note. Mr. Melia stated that he considered it a good learning opportunity for the CM team Mr. Melia emailed back in blue text to the claimants e-mail stating he wished for us to explore the background behind this and first to do that I want to find out more about this to enable lessons to be taken. He asked what the reason was that the invoice was raised in error. If the value is the same why was the credit note required to nullify the original invoice for replacement invoice to be issued and did finance raise the credit note or did someone else do it what is the normal procedure. The claimant responded "I was never expressly told that the project was a solution centre project, having conducted a search the claimant concluded there is no known reason that I'm aware why I would not have sent seeing the credit note associated with the incorrect invoice I assume that everyone who uses SAP especially those in finance has the ability to find a credit note. She stated that she totally agreed with you in finance should not have needed to come to Madden on this; they should have an automated awareness of a credit note being issued against a matching invoice. She also responded the note was required to nullify the incorrect invoice against the child project Ledger she said I automatically generated a credit note by way of cancellation of the relevant invoice.

IACCM

58. On 15 July 2020 (page 452) Mr. Melia emailed the claimant, Mr. Garthwaite and Peter Birch about IACCM certification "*..stating I don't seem to have received a reply from you to my below 13th mail requesting an IACCM accreditation update.* On 16 July 2020 (page 453B) the claimant confirmed she had now purchased the course but she still needed to complete the initial 12 question assessment. Her goal was to attain accreditation by the end of the year.

Tender Tracker

59. On 15 July 2020 (page 459A) the claimant responded to Mr Melia's enquiry about the tender track stating that to clarify the process in place with Stuart would e-mail me their tender tracker weekly often with a lot of chasing. To negate the need for constant chasing the claimant emailed the tender trackers to Stuart on a Friday afternoon so that contract managers would endeavour to submit their tender trackers on time so as not to disappoint Stewart. She uploaded it every Monday after one last chase to BOX and assumed to add visibility as a co-owner of the box update e-mail She further stated "*I can most definitely e-mail you the tender tracker I received from Chris and whoever else is involved in the tendering process with the tender trackers that Chris sent me to date. I've uploaded them to the tender tracker box folder as a place of storage and retrieval. I will continue to do this in addition to emailing them to you*". She stated she apologised if she'd missed the deadline this week since her return and she was catching up on emails

in order to prioritise the July month. Mr. Melia requested that the claimant put Christmas data in the format of the overall tender tracker spreadsheet 460A. The claimant further stated that (page 463) that Chris Davies sends her information based on a template originally devised by Stuart Donovan. Mr Melia responded (page 466) that he wanted the claimant to provide him with the format as per his below e-mail that allows for multiple participants in the pre sales process to be shown on one overall spreadsheet. The claimant responded the format being requested is the format you have already been provided; it's already set up for multiple participants. She stated it just so happens that currently as of January 2020 Chris is the sole participant. Should another participant commence sending her a weekly tracker it will in effect be tracked onto the end of Chris; as I've always tacked one onto another. The claimant went on to say Chris's raw data presented on its own, equals the overall tender tracker page 466A.

60. On 6 August 2020 (page 468) Maddon Fernando contacted the claimant about the tender tracker stating that he had not been working on contract reviews since then; since yesterday I have been requested to be involved with a DLR project in Amsterdam contract price being 400,000 I've therefore simply added a line at the bottom for this project; I do not know the status on the other projects though.
61. Mr. Kelly became involved on 5 of August (page 469). He said "I simply have one request of you, should you have issues that you need to ask further advice and any of this and feel you cannot resolve with Carl, tender track or otherwise you approach myself; trust you understand but happy to discuss if you want; my diary is stacked and trying to take Friday off but even this gets loaded with calls. In regards the actual tender tracker situation this should be a simple and straightforward thing; yes right now we only have Chris focused on pre sales but that will change as the function evolves therefore it should be a cut and paste exercise and take 15 minutes a week. The claimant responded to this that she had approached Mr. Kelly to no avail on 20 of May; "I genuinely believe Carl was missing the point entirely so I sought advice from my colleagues who are better placed to advise on the tender tracker and they helped me" She said I don't really understand the point you're trying to make and I have nothing that I want to discuss with you and her point to Carl is that it is a cut and paste exercise.

Complaint

62. Karen Hardwick set up a meeting on 14th July 2020 with the claimant to have a short discussion regarding comments made in the claimant's e-mail to Carl Melia yesterday (page 438).
63. On 14 July Karen Hardwick forwarded the claimant the Equality policy and the grievance policy stating, as discussed please review and let me know by the end of the week whether you want to make a complaint using the policies. Ms. Hardwick stated that she had mentioned to Mr. Melia the issue the claimant had raised about her qualification payment; he indicates that all the team had been advised that they need to pay for the training themselves and then claim the cost back through expenses. Ms. Hardwick informed the claimant to please claim the cost back in the usual way through the expenses system. By 20 July 2020 the claimant had not responded to the e-mail and Karen Hardwick followed this up asking the claimant to confirm her decision (page 454).

64. In August 2020 the claimant responded to Karen Hardwick (page 470) apologising for the delay and asking her to implement the informal resolution process under 8.1 of the Equality and anti-discrimination policy. The claimant also requested copies of the disciplinary, grievance, performance improvement and managing attendance policies and the formal performance review process. Karen Hardwick sent a meeting request to the claimant on 10 August 2020 to discuss how the claimant wanted to move forward regarding her concerns (page 472). Ms. Hardwick stated that based on the claimant's response "we should continue with the discussion this afternoon to agree how to move the informal process forward". In August 2020, Karen Hardwick e-mailed the claimant at page 473 stating that the claimant indicated that her concerns about being treated differently were more wide-ranging than just the use of the tracker and stretched back for a period of time. In view of this she recommended that the matter be dealt with formally via the grievance procedure. She confirmed that she would arrange for the claimant to attend a formal grievance hearing which will be handled by an independent manager and another HR BP.
65. In the meantime, the claimant confirmed that she wished to continue with the weekly catch up calls with Mr Melia on 11 August 2020 (page 475).
Facebook Enquiry
66. On 11 August 2020 (page 476) Mark Kelly inquired with the claimant how the respondent can start the administration of a number of CSI DSI contracts with Facebook. He wanted to understand how much of the work the claimant could undertake and understand "you're doing some of the activities now but obviously we'll have being put on hold the workload was significantly reduced". He wanted to know what else the claimant was doing in order to make sure the workload is adequately distributed elsewhere as there will be some activities that he was looking to get finance to get sorted. He said once you have the information he could discuss how best to structure the support on Facebook and the additional support that is required to be hired. Following a discussion with the claimant Mr. Kelly emailed the claimant 14 August 2020 (page 477) stating "I really need to get a clear position on staffing on the Facebook CSI DSI pieces as discussed huge amount of pipeline was on another submission last night for 16,000,000 worth of work in Denmark but will be supported out of the UK sorry for chasing but actually been trying to get the resource issues sorted even before COVID restrictions hence now it's critical. Can you send me the excel for your typical month day". The claimant responded "I don't totally understand but it really won't be today I'm afraid I have work coming out of my ears, a backlog, you could call it from many a productive out last in the month of July I aim to have it with you by Monday 24 August 2020 at page 478A. Mr. Kelly said I'm not sure there could be anything that is ongoing which is more important than the requests made now two weeks ago especially when I made it clear that the level and focus of this project this should be an exercise that takes no longer than 30 minutes but is necessary as have been unable to get the visibilities since first attempts in February. This should actually make your life easier so I'm struggling to understand what the issue is can you please advise when I get this information so that I can manage stakeholders and undertake necessary wider measures including discussions with finance and many other parts of the business. The claimant responded on the same date setting out the constant monthly

activities stating that gaps are filled with various other activities and she stated the spreadsheet analyst above accounts for 95 percent of what she does. In response Mr. Kelly said the e-mail creates more questions than it resolves. On the face it much of that should not be contract management or ongoing work for you or set up a call in the coming days to try and bottom this out page 480. In reply the claimant stated this is the work I have been doing; she has been told this is not the work I should be doing but I'm never told what actually is the work I should be doing.

Grievance meeting

67. In July 2020 the claimant submitted a grievance at page 430 to 432 alleging that she was treated differently because she was black.

Grievance Investigation

68. Sarah Brindley conducted an investigation into the grievance of the claimant She interviewed Mr Birch who described the claimant as not appearing anxious, tearful or upset on team meetings. He said that Mr. Melia had not reduced the work of the claimant but has asked him what work he was giving to the claimant. He stated it was probably less than originally envisaged but now it had started to increase again as he had stopped doing some of the work himself. In respect of conversations about returning to the office after lockdown Mr Birch said he had not had too many conversations with Mr Melia. He mentioned that they had a recent presentation from Mr. Kelly suggesting that we get back to normal working process. He said it would be difficult for him at the moment as he normally goes to Ireland every week. Sarah Brindley Marketing and Business Development Manager heard the grievance. She was accompanied by Karen Hardwick as a note taker in the interviews of witnesses. She interviewed the claimant on 26 August 2020. The claimant stated that she was responding to Mr. Melia's request about the tender tracker and she thought "why me.. why am I having to do this when others do not.. it can only be this is it because I'm black I'm female I am a mum I get the vibe he doesn't trust me he treats me with suspicion and wants to get rid of me." The claimant described how Mr. Melia had wanted to take the claimant down to 2.5 days per week and the claimant stated at the beginning of April, Mr. Melia rang her and pretty much told her she would be doing Facebook she was over the moon. She was supposed to be doing Facebook when she came back from maternity leave but they kept on Rosi Waite, a subcontractor. The claimant thought excellent. She said thanks for believing me. Mr. Melia said "it's not a case of.. then he stopped himself he said Mark and I wanted Rosi but the business overall. He made it clear that he wanted Rosi and not me. The claimant described being starved of work. She told Trevor Catley, she had no work. He said he would have a chat later. He said, you are doing work for Peter; I said, I am but as there is no travel there is not so much so Trevor said OK he would give me work. The claimant described literally having to claw her work back. On 1 April Carl wanted to give the claimant's work to Beata and Ivana. The claimant had tried to train Beata but she did not know how to do it. The claimant described thinking maybe if they would take work away, are they going to train me as a quantity surveyor. In respect of the quarterly report which started in June 2019 the next one was due in March 2020. Carl said to the claimant to send it to him first. This was the first time she was doing it for Carl and Mark. She worked on it and submitted it. The next day she had a phone call from Mr. Melia who said "I have just got off the phone to Stuart

Donovan he said Mark had asked him what I was smoking". He said the figures were all wrong. It was his the first time I had seen a different side to him. In respect of the time sheets, at the meeting February we were told we all had to do them in March. She managed to backdate them but then she fell behind again. She described doing many things so I don't have project codes for them and they are such a headache to fill out. She said she thought each one takes about one hour. Mr. Melia had suggested to her that 111.5 hours were non productive time. The time sheets are vague. Mr Melia wanted to know what the non-productive time was. She said it would be via the tracker; she said if you got me the HEC codes you could get from the time sheets. Trevor said I can't book HEC and gave me a work around which she gave to Carl who said she was threatened with a performance improvement plan. She said she was eight weeks late with her timesheets. She knows of another colleague who's 8 to 10 weeks late and questioned whether they actually put him on a performance improvement plan. As for expenses that was not a performance issue. The fact she hadn't put a claim in for money back from the company seems absurd. The claimant asked Mr. Melia for a development discussion. She thought that was what the meeting was going to be about but then he went into concerns. She thought he was going to talk to her about being a trainee quantity surveyor. As for the IACCM training the claimant purchased it. She explained to Karen she secured permission to get it paid but had not claimed it back yet. She said Mr. Melia he told her she could not do it; all others have been allowed to go on the course and not me. Overall I am the only female; working from home mother. We are both ethnic minority you have treated Madden with suspicion too. Richard Crouch has not done timesheets since he started in April. He said to me he's not done any timesheets in July. He asked me to do Chris Davies timesheets I don't have time to do my own. The claimant said she wanted to be treated fairly and wanted equal opportunities within the team.

69. Mr. Melia was interviewed on two occasions on 3 September 2020 page 490 to 496 and on 17 September 2020 page 504 to 506. Mr Melia said that the proposal for the claimant to take 2.5 days off per week was a welfare issue; on 7 February the claimant came onto a call and she burst into tears and another incident in April. He set up a well-being discussion. He said 2.5 days was not specifically mentioned. He said if she needed some time off she could get some time off. She said she was struggling with a toddler. Mr. Melia said if she wanted she could have time and offered parental leave. At no point did he suggest changing 2.5 days per week. He spoke to Nick Stockley in HR in March. He has never said 2.5 days. On 7 of February the claimant was in emotional distress because the son had been in hospital. There were issues and Mr. Melia said he was getting concerned namely that the claimant would disappear; not be available to people; her behaviour was erratic and she could be tearful. He said he had explained the importance of basic admin including timesheets which the claimant was not doing. In early March 2020 Madden and the claimant were both behind on timesheets and hadn't completed them for between 6 to 12 months. In February they were given the task of getting up to date by the end of March. Both got there since that time. Madden had done them on time on two occasions since then the claimant has let them slip in July. The claimant had not done timesheets since the beginning of May. Mr. Melia tried to contact her but he couldn't get

hold of her timesheets. She should complete them weekly for the Monday morning. He was asked about preferring Rosi Wait. Mr. Melia said she was a contractor for Pete Birch on the Facebook account when COVID came there was a push to let contractors go so Rosi left the business. He stated there was a need for Gemma to step into the role. He said Gemma was completely capable in the role and he would never say he had a preference as this would be completely unprofessional. He would have mentioned Rosi but would not have said she was better than the claimant. In respect of the well-being meeting Mr. Melia said that he set it up because her son was in hospital with suspected pneumonia. He was more than happy to support that. He said that he wanted to alleviate her stress There was also an incident when the police turned up at the house. The son had locked himself out. He sought advice from HR and set up a well-being meeting on 20 April 2020. The claimant declined the meeting. He also offered her to have time off. He said that Madden reluctantly gives the claimant work and she failed to complete a piece of work and he had to take it back off her. He does not use the claimant much until month end. Trevor Catley has had not much need for Gemma. Peter was using Gemma for Facebook during lockdown but there was not the same volume on Facebook due to the reduction in expenses. He has never said to take work off Gemma to Trevor and Madden; they have had their own concerns about Gemma's work. They also discussed the quarterly report and Mr. Melia said that the report was created by Mr Donovan and Gemma was manipulating the data. The report is a quarterly KPI. The report was done by Gemma took three attempts. There were errors. She admitted there were errors and corrected them. There was a drop date to submit it so he got it late afternoon on the day, nothing was coming back from Gemma so he went through the report himself and shared it with Mark. He described staying up until 11 at night to complete it. The report is now automated from SAP. They discussed the fact that the claimant worked from home and that she has always worked from home. She was asked to work two to three days per week in either London or Maidenhead. Her role is contractually Maidenhead. The claimant was asked to come into London or Maidenhead one day in the week and to see how it goes. In respect of the timesheet if the claimant had difficulty with cost codes she did not raise it until July after I asked her to do timesheets. He said I would love nothing better for her to be a brilliant part of my team it comes down to fairly basic tasks. Later in the interview Mr Melia said that the claimant had raised the issue of not being able to do timesheets due to missing cost codes in July. He did say to her she had never mentioned this as an issue before in early March. He said if you don't get cost codes you must let me know Gemma. Occasionally she supports a PM who is not part of my team; they are the holder of all costs for the project. It's been an ongoing issue for all contract managers. Sometimes there's no budget for the team managers to book against. This has been identified with the projects teams with Andy Webb. We need to know where the costs would go so we could recover; otherwise they were just going to be overheads. He said that Gemma needs to escalate to him if there is no budget.

70. In respect of his conversation about the claimant with Nick Stockley he said it took place in mid-March. He was talking to Mark Kelly about resource. They had concerns about Madden and Gemma. Mark Kelly had said to take a call with Nick Stockley and talk about concerns. It was about 15 minutes to

half an hour. They asked how can we ask for information; what can we do and what can't we do; they sought some advice off Nick Stockley. Mark had concerns about the fact that Gemma was not doing anything. This was the gist of the discussion. Nick's advice was to make sure we record conversations. He said there had been a potential issue in past between Gemma and her previous manager Phil Strickland. The claimant moved to Stuart Donovan when she returned from maternity leave. Mr. Stockley said to keep records and be mindful about how you approach things and keep him informed of any developments.

71. In the course of her grievance investigation, she also interviewed Trevor Catley (page 497-8) who recalled Gemma Spencer had been tearful or upset on a couple of occasions. He said that Gemma is on occasions a bit emotional. He couldn't recall why. He said he had never been told not to give the claimant work. He said he had to do timesheets weekly. He said it's recognised that it's difficult to allocate 5 minutes here and 10 minutes there so the direction is to cost the time to a specific administrative cost centre. When booking holidays he tends to give 7 or 14 days notice. He was told by Carl not to rush back for the sake of it into the office. He was told if you have a customer meeting then you can go back to an office as required and he was a bit more out in the office.
72. Maddon Fernando was interviewed (page 499-501). Mr Fernando said that the claimant was not tearful but said she was subdued on meetings Mr. Melia had not discussed reducing the amount of work given to Gemma. If anything, it's the contrary. He explained that the timesheet had to be submitted by Friday that particular week or by the Monday. Timesheets show the proportion of costs for each business and for the labour force. He had no conversations with Mr. Melia about returning to the office. He said he does his timesheets in Excel and matched this template to his Lotus notes. In terms of a tender tracker they need to complete every Thursday. He said that Gemma has asked him if he has done it now. He says I don't do it as I have nothing involved in the tender stage; I am only post contract now.
73. Christopher Davies was also interviewed (page 502-3). Mr Davies said that the claimant had been quiet but not crying or tearful. Mr Melia had never discussed reducing the amount of work given to the claimant. He can book holidays retrospectively. He was talking about planning a holiday to Bulgaria because his holiday was cancelled due to COVID. He booked another holiday on late in August at the same time as Carl which was a mistake on my part. Later on I said were you going on holiday and he said I've not booked anything else. Warrington is his nearest office, but he doesn't have any real contacts. There was no need for him to go into the office. There was no need and has no pressure to get into the office. He said he could see there was some tit for tat emails going on between Madden and Gemma. He does pre contract like Madden.
74. Peter Birch was also interviewed see (pages 408-9). He did not recall the claimant being upset but only quiet in meetings. There was no discussion with Mr. Melia about reducing the claimant's work. There was little discussion with him to return to the office.

Outcome of the Grievance

75. By letter dated 22nd September 2020 (page 508 to 511) Sarah Brindley did not uphold the claimant's grievance. She found there was a discussion with Nick Stockley about the claimant; Sarah Brindley spoke to Mr. Stockley but

she failed to take any notes. Carl had said the claimant had flagged up some challenges about working from home he agreed with guidance from Nick that the claimant could consider parental leave although he does not agree that he asked you to take 2.5 days off per week unable to make an assessment of the specific point of 2.5 days per week and it appears that this was due to concerns that you had personally raised. There was a dispute a fact about the conversation of preference with Rosi Waite. In respect of backdating an invoice there were concerns about a specific project that you and Madden were working on. Carl sought clarification about this. In respect of the well-being meeting some colleagues noted that the claimant appeared quiet in meetings and occasionally upset. HR advised a call and contacted Karen Hardwick who confirmed Carl was generally concerned about your well-being and suggested the well-being discussion. Carl is acting on the advice from HR team and out of concern for you. Colleagues confirmed that Carl did not ask them to stop sending you work. The claimant believed she was unfairly treated by being asked to complete timesheets and given an unreasonable time frame due to the difficulty of getting cost codes from project managers. The team confirmed they have been advised of the need to do timesheets by Carl and submit in a timely manner. Carl confirms he has advised the claimant to get cost centres from managers and if you cannot get them to escalate to him. It is not unreasonable to complete timesheets in a timely manner in line with company policy to enable accurate billing records to customers. This treatment appears to be consistent across the team. In respect of booking of holidays, colleagues give Carl Melia advance warning of holidays. Looking to backdate holidays for six months was not in line with company policy. Carl had not expressly communicated his expectations to the team. The rationale behind allowing the backdating of holiday bookings through the lockdown because these were unprecedented times. This should not form part of the performance improvement plan due to previous managers style but please ensure you follow the company policy in the future. She further confirmed that you should claim expenses in the month they are incurred in line with company policy. In respect of being 2 to 3 days in Maidenhead or London Carl indicates he had asked the claimant to consider working from an office starting with one day a week although he doesn't agree that he said two to three-week days per week. Discussions with colleagues in the team is that they have not been asked to return to the office. This point of the claimant's grievance was upheld on the basis that your colleagues have not been asked to return to Schneider site. It was recommended a review of your contract is undertaken. In respect of the IACCM training she had seen evidence that Carl had included the claimant with the rest of the team in February asking for the status of enrolment. It was found there was a consistent approach across the team after careful deliberation; having heard all the arguments the claimant's concerns about discrimination were not upheld. The conclusion was that the grievance chair did not believe that the claimant has been treated differently from her colleagues without a good reason although it appears that you have been asked to return to the office one day per week whereas your colleagues were advised that they only needed to do so if it was required for business reasons. A mediated discussion was recommended.

76. The claimant was given a right to appeal the grievance until 29 September 2020. The claimant decided not to appeal the decision on 23 September 2020. The claimant informed Ms. Hardwick (page 512) she had communicated with Carl and mutually communicated and conducted business in a professional manner; long may it continue. The claimant stated that her main concern was totally bypassed by the investigator. Karen Harwick on 24 September 2020 encouraged the claimant to appeal but the claimant did not do so. The claimant stated that she really cannot see what there is to discuss. The claimant asked for the disciplinary and grievance and performance improvement to managing attendance policy and formal performance review process. On 24 September 2020 Karen Hardwick stated that she would ask the claimant to double check whether she wanted to appeal as the claimant had said that she felt the grievance investigation bypassed her concerns; an appeal would be inappropriate opportunity to raise any omissions and have another independent manager review it.

Notification of pregnancy

77. On 14 October 2020 (page 516) the claimant informed Karen Hardwick that she was pregnant and that she wanted her maternity leave and pay to begin on Monday February 1 2021; her expected week of childbirth was February 3rd 2021. The claimant confirmed that she wanted to take 26 weeks of ordinary maternity leave.

78. On 26 October 2020 the claimant contacted Mr. Kelly to seek approval of her IACCM assessment as Carl appeared to be away. She said that she was on module 8 of 36 and hoped to be done by early December at the latest.

79. On 17 November 2020 page 548 Mr. Melia set up a call for a discussion with the claimant to obtain a deeper understanding of the work the claimant was currently undertaking e.g. SAP/Facebook. He stated it would form part of the resource planning he required for any potential maternity cover. The respondent recruited Rosi Waite from 9 November 2020 until 31 March 2021 (see contract page 555 to 556).

80. By email dated 29 January 2021 Mr. Melia announced to the team that the claimant was on maternity leave from 2 February 2021 to September 2021. On 2 February 2021 Mr. Melia sent a congratulations email to the claimant as did Mr. Kelly. The claimant responded on 19 February 2021 and was happy to share her news with the European Team.

81. On 21 July 2021 (page 592) the claimant contacted Mr. Melia stating that *“she was thinking of submitting a formal working request to compress her hours over four days. However the policy recommends it useful to discuss options with my line manager first ideally I would like to compress my hours over four days IE Tuesday to Friday starting 8:00 AM and finishing at 6:00 to commence upon my return in September is this something that could work for the business I look forward to hearing from you.”*

Contact with claimant on maternity leave

82. On 20 August 2021 (page 596) Mr. Melia e-mailed the claimant about her maternity leave stating that he wanted to have a catch up before the claimant returned to work from maternity leave on 6 September 2021. He stated he was away from 23 of August to the 6 of September but Mark Kelly would be happy to have a discussion with the in his absence.

83. The claimant entered into a chat with Mr. Melia asking when he was arranging the handover of her job back from Rosie. The claimant asked

whether he wanted her to just reach out to Rosi herself to take her work back. She also suggested she could send out an email to let manager's know she's back.

84. From 8 September 2021 following her return to work from maternity leave on 6 September the claimant commenced covertly recording conversations with colleagues including Mr. Melia. On 8 September 2021 Mr. Melia spoke to the claimant about a "new" job opportunity in HEC. If the claimant took this role she would no longer face a performance improvement plan. If she stayed in the contract management team the claimant would be subject to a performance improvement plan.
85. On 9 September 2021 page 602 the claimant thanked Mr. Melia in respect of the exploratory call and e-mailed Mr. Melia stating please arrange the handover of all my duties relating to my job from Rosi back to me now that I'm back from my maternity leave. The claimant copied in Mr. Kelly who responded that there are some HEC changes and an opportunity that presents itself for the claimant's career perspective. He said the main discussion and process was being led by Carl and the local HR.
86. On 10 September 2021 Mr. Melia set up a meeting with the claimant, Mr. Patton and himself for an "exploratory chat on HEC support opportunity." In the meantime Carl Melia emailed Karen Hardwick and Mark Kelly to state that Gemma had contacted Madden on 9th discussing Mr Melia and wanting Madden to get involved and speak out against Mr. Melia in raising a complaint. Madden told the claimant that he had no issue whatsoever with Mr Melia and no reason to make a complaint.
87. Mr. Melia did not join the call with the claimant and Mr. Patton. During the call Mr. Patton explained there was an expansion therefore there was a need to recruit.
88. The claimant emailed Mr. Melia on 13 September to state that she had spoken with John Patton about the role it sounded like more of the same of what she does with John and the team with more focus on engagement with the PM which she already does anyway. I'm going to reach out to the powers that be to ensure that I can book my time accurately and correctly to the HEC in the manner that Trevor Catley does.
89. Mr Patton reported back on 17 September 2021 to Karen Hardwick following his conversation with the claimant (page 618). He apologised for the delay saying he'd been away with customers this week. He stated that the claimant had been scathing of both Mr. Melia and Mr. Kelly accusing them both to be liars and devious. She mentioned she had a law degree and was being deliberately starved of contract management type work by Carl and the only work she was doing was for the HEC. She said that all of her work was being deliberately diverted to a subcontractor Rosi Waite. She then went on a verbal attack saying she (Rosi) spent most of her time tending to her horses working on her own business works and not on the respondents work. She said Carl and Mark were playing a dangerous game and how they were treating her. Mr Patton described a new role to her and she said it sounded very much like what she was doing and that she preferred to stay where she was and be engaged in the HEC by the contract management team. She asked why Trevor Catley was not also transferring Mr Patton said this was not her existing role transferring but a new role the respondent was creating to actively support and push the PM's within the HEC. The claimant said she would rather have the status quo and support Mr Patton via the

contract management. He said the roles would be advertised at some point but we were giving her a heads up on what we were thinking if she was interested in applying. This contrasted with the impression given by Mr. Melia to the claimant that the job was available immediately. He felt taken aback. He had a serious concerns over the claimant's attitude and the allegations and he would not be pursuing this with her.

Contacting the team

90. On 13 September 2021 (page 608) the claimant emailed the team to state I'm back at last Monday 6 September 21 please or join me in thanking Rosi for her maternity cover. I've attached some photographs of her children. Mr Melia responded that the claimant should not use her personal e-mail account because it was a potential cybersecurity risk and concern and requested that the claimant immediately cease all activities in line with policies that compromise their cyber security of the respondent. In a further e-mail (page 611) Mr Melia stated that following a discussion on 13 September he noted that the claimant's outlook calendar was showing a hashed out grey and white block through the entire diary since the claimant returned from maternity leave so he was unable to see any availability for the claimant during the working day for meetings or cools. Although the claimant had said she was not aware of this and stated it may be an issue with IT he said that other colleagues were encountering the same visibility issue with the claimant's calendar. He informed the claimant that he required visibility of the claimant's outlook calendar to enable availability for meeting invitations to be identified. He requested the claimant review her outlook settings or seek assistance if necessary to ensure that her outlook calendar visibility remains in place to enable all your colleagues and our internal customers to have access through your calendar availability.
91. On 15 September 2021 the claimant contacted Carl Melia (page 615) seeking an explanation why Trevor Catley's contract management support to the HEC is considered as part of his role within the contract management team but her contract administration support to the HEC (which she had been doing since April 2019 is not considered part of her role within the contract management team) The claimant stated the administrative support she provides to the HEC is in conjunction with and supplements the managed support Trevor provides to the HEC. The claimant stated that you cannot have one without the other. She also requested the minutes of the meeting on 13 September 2021.

Grievance 17 September 2021

92. On 17 September 2021 (page 616, 620 to 633) the claimant submitted a grievance against respondent and Mr Melia Mr. Kelly and Karen Hardwick. The claimant's grievance was detailed and she raised complaints about pregnancy and maternity discrimination direct race discrimination and harassment related to race. The claimant was particularly concerned on her return from maternity leave that she was having to wait to get her work back; she also expressed this as unfavourable treatment because of her pregnancy and maternity leave. She complained that Karen Hardwick was aware of Carl Melia's and Mark Kelly's unlawful actions but had not interjected at any point. She described Karen Hardwick as enabling them to perpetuate their unlawful actions. She complained that from March 2020 Mr Melia had ordered her not to purchase the IACCM course because it was too expensive for the claimant to pay without an Amex card. The KPI

quarterly reporting was removed from her by Carl Melia and then he set a goal relating to the KPI reporting which the claimant failed. She reported that Mr Kelly had stated he was considering making her a business data analyst however once he met her that particular opportunity did not materialise She felt that Mr Melia trying to convince her that it was OK not to be OK and complained about the suggestion that she takes 2.5 days per week and takes 18 weeks parental leave or take random annual leave; distribution of her work to the end user; refusal by Elaine Kelsey to give her full access to information provided to a white subcontractor; a poor performance review and a phoney performance improvement plan. She complained that Mr Melia contacted outside business calls.

93. Nicola Hill acknowledged the claimant's grievance and invited her to a meeting on 22 September 2021 (page 634) to discuss the grievance. In an e-mail dated 22nd September 2021 page 636 Hannah Bulkeley- Jones set out what she considered was evidence to support the claimant's complaints and copied in the claimants unite representative. The claimant was interviewed again on 28 September 2021. She also interviewed Karen Hardwick, Trevor Catley, Richard Crouch, Sabena Bibi, Elaine Kelcey, Lisa Higgins, Andrew Garthwaite, Abhishek Gupta, Gavin Lilley, Carl Mason, Andrew Webb, Chris Davies, Karen ward, Martin Liddel, John Patton, Rosie Wait, Maddon Fernando, mark Kelly, Peter Birch, Carl Melia and Sarah McGill. In the course of her investigation into the claimant's allegations as to whether Mark Kelly when welcoming the claimant back to work described having a diverse range of people exercising their rights she and her colleague Hannah asked Mr. Catley page 745; Andrew Garthwaite page 751; Peter Birch at page 817 and Mr. Fernando page 865 about the wrong person i.e. Mr. Meila and not Mr. Kelly; no witness could recall this. Her evidence is that between her and Hannah this error was not deliberate and was an error. The Tribunal determined it was an error and sloppy and suggested that the claimant's grievance was not being considered with due care.

Outcome of the grievance

94. By letter dated 1 November 2021 (page 965 to 993) Nicola Hill rejected the majority of the claimant's 59 points of the grievance save for a few points. Nicola Hill found that the return to work process was mismanaged but did not find there was any intention to remove her from the original job role. Further she found that how Mr. Melia worded the new role in the HEC was not correct and initiating the PIP immediately was incorrect; but she did not consider this to be discrimination. Further she found placing the claimant on a PIP straight after she returned from maternity leave was incorrect because there should be a period of adjustment for the claimant to re-establish herself but was not discriminatory. She made further criticisms of the way the new role in HEC was worded by Mr. Melia and discussion of the PIP but deemed they were not discrimination. Further she stated copying all team members into a late application for holiday was inappropriate; she did not deem it to be harassment. Ms. Hill also found the claimant had been let down by the respondent in terms of the lack of clarity of her job description. She noted the job description clearly states contracts administrator/trainee quantity surveyor. She did not think it was an error by Carl or Mark as they joined the company a few years ago. She upheld the point in relation to the lack of clarity over the job advertisement and career development

discussions but she did not consider this to be harassment. Furthermore she found that there had been a lack of goal discussion prior to the claimants annual review for which she will be providing recommendations.

95. The respondent extended the claimant's period to appeal to 15 November 2021. The claimant submitted her appeal dated 16 November 2021 page 1008 to 1009. Mark Hall acknowledged the claimant's appeal page 1012 and invite the claimant to an appeal a grievance meeting on 15 December 2021 (page 1012-3). The claimant was invited to add any further documents she wished to be considered by 14 December. In the course of the hearing the claimant stated why was Rosi still doing her job?

Outcome of Grievance Appeal

96. By a letter dated 24 January 2022 Mr Hall rejected the claimant's appeal. He also viewed the video recording submitted about the claimants return to work with reference to the comments made by Mark Kelly. He stated he believed the intention was of a genuine nature and not discriminatory but did think the articulation of the message from Mr. Kelly could have been better delivered so not to cause an interpretation of offence to the claimant.

Invitation to disciplinary meeting

97. By letter dated 6 June 2022 page 1081 the claimant was invited to a disciplinary hearing investigating a serious allegation of misconduct namely failed to complete timesheets. It was stated that the purpose of the disciplinary hearing is to formally put the allegations of serious misconduct so that the company can establish whether or not the allegation is well founded and if so can decide on the appropriate sanction. The claimant as to be given the opportunity to respond to the allegations and put her case forward at the hearing but it was stated please be aware that if these allegations are upheld against you a possible outcome may be that the respondent issue a first or final warning or dismiss you on the grounds of serious misconduct. It stated the company considers failure to complete timesheets to be unacceptable and that it breaches company policy.

Arrangement of meeting

98. On 10 June 2022 (page 1082) at 6:32 in the morning the claimant emailed Mr Melia seeking to put some time in the calendars to discuss the performance and pipeline opportunities from tendering. She referred to the schedule of the call is fully booked by a short period which I assume is for lunch I also wanted to review with you the AFP process as discussed with the CM's if you actually do have some time today please do not hesitate to let me know otherwise we are able to reconvene next week please from Tuesday onwards?
99. Mr. Melia responded page 1083. He said my diary will no doubt be similar gets booked up in advance on some days due to the role that I undertake as a director within our organisation and Sarah's important role in providing our pre sales contract management support as you are aware an instruction for you to arrange time in our diaries for today for a follow up meeting was accepted and agreed by you as an action in our last meeting on this topic on 27 May 2022. In the 14 days that has passed since that meeting I have not received an invitation to book time in our diaries. We discussed that the follow up meeting was still required today when you and I had an online meeting earlier this week to discuss on Tuesday I still have some time availability for today not taking into account service availability constraints

however I still received no invitation booking time in our Diaries since Tuesday my diary has become full and indeed double booked at points during today. It is disappointing that the first indication that you've attempted to book time in our diaries was today the date we'd previously agreed you'd schedule meeting time within it really is unrealistic and therefore unacceptable for you to have waited until today to try and arrange a meeting for today when you've been given instruction to diarize it 14 days ago a follow up meeting with Sarah and I remains outstanding and now overdue instruction.

100. Mr Melia invited the claimant for informal counselling by invite 15 June 2022 at 9:30. At the meeting held by Mr. Melia with the claimant Mr. Melia noted it was necessary for the claimant to follow through an instruction to which she had previously agreed to is reasonably instructed by others to the date and deadline given to Gemma or agreed with Gemma. He stated it was important for example the context of agreed meeting dates that Gemma is to diarise as being part of a team means that accommodating others availability or taking due consideration that they're all may mean their availability can be constrained equally important that Gemma follows instruction and meets deadlines when for example other team members or colleagues are waiting on Gemma's work to allow them to do their role/function or other work being completed as a contract administrator Gemma confirmed in the informal counselling session that she's now clear on the expectations of her failure to follow above actions may result in disciplinary action being taken.

101. The claimant responded to this e-mail in red text (at page 1096 to 1097). The claimant stated "I didn't know that I had to be aware nor was I aware of how important you and Sarah are and therefore mindful that she will both be in such demand that your calendars will get booked up in advance." She further stated there was no deadline in place to send the meeting invitation "you didn't instruct". She went on to say the fact that it appeared that you had no availability in your calendar is not my fault at all. You incorrectly state in another e-mail that I have not complied with your reasonable instructions. I wholeheartedly disagree with your assertion. I followed the action to the letter I went to put time in our calendars for Friday June 10 2022 but you appear to have no availability. What confuses me however is that you found the time to write this lengthy e-mail at 9.46; another one at 12:05 and then extended an invite to an informal counselling session at 15.47. I did say my e-mail below if you actually do have some time today please do not hesitate to let me know we could have spent much we could have spent better we could have spent that I'm better actually discussing what we need you to do "Carl you are victimising me contrary to section 27 but the quality acts 2010".

Disciplinary Hearing 13 June 2022

102. A disciplinary meeting was held on the 13 of June 2022 chaired by Simon Coleman (see pages 1084-1095). In the outcome letter dated 16 June 2022 Simon Coleman determined to give the claimant a first written warning on the basis that the claimant had a backlog of three months time sheets not submitted. He stated the importance of timesheet completion had been made clear to the claimant on a number of occasions. During the hearing, the claimant acknowledged this and that she had not completed her timesheets in accordance with the company policy. Her mitigation for non-

submission of timesheets was due to high work load and other priorities. Mr. Coleman stated he understood both from your line manager and HR that the claimant had been advised to block out time in her normal working week to complete it. The claimant cited additional mitigation relating to access to correct information on the S&P note server as a reason for non completion of timesheets. Mr. Coleman stated he understood that you are able to submit a timesheet however you are not always able to record your productive time related to your work undertaken for the HEC team. This results in the claimant booking non-productive time against your department cost centre. This limitation has been previously understood and accepted by the line manager and HR. The claimant has submitted timesheets in January and February on this basis but has not submitted any since. He stated that the claimant had ongoing support from both her line manager and HR to help align the expectations of the role during the hearing. He also noted the claimant stated that she didn't read communications from your line manager or HR. In the circumstances it was determined to issue the claimant with a first written warning. It will be recorded on the claimant's personnel file for disciplinary purposes after 16 December 2022 that is 6 months from the date the warning was actually issued. The claimant was given five days to appeal.

Mr. Melia's complaint

103. On 16 June 2022 (page 1102-1103) Mr Melia made a formal complaint about the claimant to Hannah Buckley Jones stating "I'm deeply concerned by the e-mail contents from Gemma Spencer" and can no longer tolerate the seriousness of the entirely unfounded allegations this member of my team has made towards me. He stated he was very troubled that a member of my team Sarah McGill who is under one year service has been copied into this e-mail. Gemma's behaviour is ripping the cohesion of my team apart. This was not the first time she's done this. I wish to personally raise this as a matter of grievance against Gemma Spencer. He considered the claimant was waging a vendetta him and making unfounded allegations. He said the claimant's behaviour had the effect of being disruptive and antagonistic towards him, not for the first time. Hannah Buckley Jones (page 1102) acknowledged receipt of the grievance and stated she would process it in accordance with the procedure.
104. Mr. Melia was interviewed on 27 June 2022. He stated at page 1114 he had real concerns about being able to manage the claimant, fear of what she will say. He described that he struggled to manage her in one to one situations. He was waiting for something to be misread and being misconstrued. He recently sent a wrap up e-mail about informal counselling. This was agreed to extent of informal counselling session around the 10 of June dates. Gemma agreed that she didn't do what was expected of it. Sent a copy to Gemma to agree and she came back to effectively disagree to all of it. He stated he was aware the grievance having been raised with Gemma who's aware and it's been raised against her that it could inflame her again.

Further disciplinary Hearing

105. On 12 July 2022 (page 1129) the claimant was invited to a disciplinary hearing on 14 July 2022. The purpose of the meeting was the investigation of misconduct related to allegations made in bad faith and in an

inappropriate manner. It was heard by Rachel Whittington. She had no knowledge about the claimant's previous grievances.

106. She considered the claimant's email response to Mr. Melia who had complained about harassment by the claimant. She formed the view considering that the claimant had acted in bad faith and had responded inappropriately. The claimant said she did not mean to send it; she felt that Mr. Melia was victimising her. Ms. Whittington took the view that the claimant could have raised concerns about Mr. Melia if she felt he acted inappropriately via HR. She concluded that the manner in which the claimant acted was inappropriate and bullying. She determined that a final written warning was an appropriate sanction. The claimant was also subject to a first written warning for failing to complete timesheets in contradiction to a reasonable management instruction. Under the disciplinary policy (page 203) Ms. Whittington totted up the two sanctions and dismissed the claimant. It was clarified in questioning that the claimant's case is that Mrs. Whittington was instructed to dismiss the claimant. Mrs. Whittington refuted this suggestion and the Tribunal determined that Mrs. Whittington had taken advice but had formed the independent view that the claimant should be dismissed pursuant to the totting up process in the disciplinary procedure.
107. The disciplinary process at paragraph 5 states that current formal warnings only may in addition be accumulated with subsequent warnings regarding misconduct when deciding the outcome of disciplinary hearings or when deciding upon the allocation of any further misconduct to formal or informal resolution. The claimant disputed that this was permissible pursuant to the procedure and in particular she placed reliance on paragraph 12.1 which refers to a stage one warning whereby another active warning can and be summed with any additional sanction; so that an offence of similar seriousness will attract a stage two final and a third might easily result in dismissal unless mitigating circumstances apply. The Tribunal determined that the policy was widely drafted at paragraph 5 so permitting the respondent to tot up in the manner adopted by the dismissing officer. The claimant did not pursue with the witness whether her decision was contaminated by Mr. Melia's alleged discriminatory attitude; rather her case was put on the basis that Mrs. Whittington was instructed to dismiss. The Tribunal rejected that Mrs. Whittington was instructed to dismiss.
108. Mrs. Whittington did not conclude that the claimant did not genuinely believe she was being discriminated against. Her assessment of the situation is that the claimant had no mitigation; at the hearing she could not identify what was victimising about Mr. Melia's email; the claimant could have raised her email concerns via a process namely HR and her tone was unacceptable, nasty and vindictive. She reached this view in the context that the claimant was not someone who liked taking instructions.

Dismissal

109. By letter dated 19 July 2022 Rachel Washington dismissed the claimant. The claimant had not provided any further evidence with mitigating circumstances. It was determined that on 14 June the claimant sent an inappropriate and offensive email to her line manager that also included a colleague in distribution. This was deemed to be in serious breach of the company's disciplinary procedure bullying and harassment policy. The conduct showed a complete lack of ability to manage yourself, follow procedures and/or guidance from superiors and related to none of the

Schneider electric's core values you claimed during the meeting that the e-mail was sent in error as you had not finished it however you made no attempt to retrieve the e-mail to speak to HR or offer any apology you've claimed that the e-mail is incomplete but offered no validation of what else you would have added or removed from its content aside from you stating you would have removed your colleague from the distribution list the claimant has stated the e-mail initiated by Carl was horrible offensive and racially motivated and showed victimisation on numerous occasions but during the meeting you were asked to identify the specific points in the e-mail that you refer to as horrible offensive racially discriminative or demonstrated victimisation but were unable to do so. The e-mail in question was an e-mail from your line manager stating facts; a requirement to follow company procedures in reporting or demonstration of your job role. It was considered in the circumstances that the allegations of discrimination in your e-mail were wholly false and made in bad faith. The claimant submitted grounds of appeal at page 1143 to 1145.

110. By letter dated 18 August 2022 page 1165 to 1166 the claimant appealed claiming the penalty for the e-mail sent to the claimant's manager was too severe and the procedure had not been complied with correctly. The claimant stated that the warning summed up together should not lead to dismissal.

Appeal

111. An appeal hearing was held on the 11 August 2022. Mr. Hull concluded the e-mail which the claimant sent was deemed to be in serious breach of the company's disciplinary procedure bullying and harassment policy. The claimant stated during the appeal hearing that she didn't believe she had done anything wrong and that you should not have received a warning at all. Mr. Yeeles concluded this indicated a lack of ownership of actions. He concluded that the disciplinary procedure had been applied correctly and the warnings summed up together can lead to dismissal. He concluded that the decision to terminate the claimant's employment was based on the accumulation of warnings in line with the disciplinary procedure. He stated mitigating circumstances of the continuous discrimination and victimisation the claimant provided recordings prior to and after the appeal hearing to show proof of continuous victimisation discrimination. Mr Yeeles would listen to the recordings but couldn't find any evidence. The claimant's two grievances had not been upheld. He could not find any further evidence. The claimant stated that the hearing manager had already made the decision prior to the meeting; Mr. Yeeles found there was no evidence suggesting that the hearing manager had made-up her mind about the outcome beforehand. He noted that the claimant had been asked to submit any evidence prior to the hearing so this could be taken into account during the hearing. He stated having considered the grounds of appeal he decided to uphold Rachel Whittington's decision to terminate the claimant's employment. This was on the basis that the allegation itself was so serious as to warrant a final written warning on its own but as the claimant already had a first written warning, the outcome was dismissal on notice.

Credibility

112. The Tribunal found that neither party came out of the case particularly well. The claimant was very emotional at times during her evidence. The Tribunal found that the claimant genuinely believed that the respondent

wanted to remove her from its organisation and that she had been treated less favourably/unfavourably by reason of her race and/or maternity/pregnancy. There were matters in some of the behaviour and treatment of the respondent which the Tribunal found to be poor management so that the claimant formed the genuine although at times misguided view it was all to do with her race.

113. The claimant was intelligent and hard working. She had obtained a law degree. Some context has to be given to some of the claimant's concerns namely that she was being required to work from home during COVID; with all the additional pressures that brought. Mr. Melia requested that the claimant complete her work time sheets and time in motion. The claimant appeared to take great affront to this and considered this was by reason of her race but the system of time and motion was a process instigated by her previous manager Stuart Donovan. There was a lack of explanation by the claimant as to why it was acceptable for Mr. Donovan to instigate it but discriminatory on grounds of race for Mr. Melia to request the claimant to re-instate this.
114. The claimant informed the Tribunal that she had historically been a victim of race discrimination. The Tribunal determined that this past appalling experience tended to influence the claimant's outlook in respect of every experience with managers at the respondent and viewed any perceived criticism through this prism. The claimant also had been left to her own devices via the management of her previous manager, Mr. Donovan, and it was a huge shock to her when Mr. Melia started to manage her with a far more questioning and interventionist style. The claimant was an intelligent person and competent in her role (as accepted by Mr. Melia in evidence). However, she could be volatile and her behaviour could be unpredictable and defiant. The claimant described Mr. Melia, her manager, as "a fat bastard" and mimicked his speech impediment during the Tribunal hearing. The claimant did not seek to apologise for this behaviour. The claimant could be difficult and confrontational and failed to show any deference to her manager. The Tribunal found mostly the claimant was honest but flatly denied she had shared personal details of her past with a work colleague. The Tribunal found that the claimant was dishonest about this and could not see, taking into context the detailed knowledge of Mr. Fernando, that he could possibly have fabricated this.
115. The Tribunal also wish to make some observations as to how the respondent ran its case before the Tribunal. The respondent's evidence (from Mr. Melia) was that the claimant was competent and there was no favouritism on the respondent's part towards the white female contractor Rosi Waite in preference to the claimant. When Mr. Melia offered the claimant a role in the HEC which would mean she was moved out of Mr. Melia's team, the respondent's position is that this was a genuine offer and was not moving a difficult employee. The reluctance to give back the claimant all her tasks and in particular the Facebook account was not because it sought to remove or diminish the claimant's role but it was to give the claimant time to settle back into her role on her return to maternity leave; the claimant did not receive the Facebook back on her return. The Tribunal found the respondent's explanations as set out below unsatisfactory in the context of the respondent's case that the claimant was experienced and competent in her role and there was a significant dispute of evidence

between Mr. Melia and Mr. Patton as to how immediate the placement into the HEC role would be.

116. The Tribunal found Mr. Melia's evidence to be inconsistent in parts. His evidence concerning the check in with the claimant because she had been distressed in February and March did not align with his evidence during grievance investigation interviews. He informed the investigators that before lockdown the claimant was well. He informed the Tribunal that the claimant was a competent contracts administrator and disputed any suggestion there was a move to remove the claimant from the team. The Tribunal was not satisfied with Mr. Melia's evidence about why he sought to offer the claimant a number of options on 20 March 2020 including part time working. His explanation was that the claimant was distressed but this was contradictory to the evidence he gave the investigators that before lock down the claimant seemed fine. It was about this time that he and Mr. Kelly sought advice from HR, Mr. Stockley because Mr. Kelly was not sure what the claimant was doing.
117. Mr. Melia lacked the management skills to handle the claimant. She questioned and challenged him. The respondent should have required Rosi Wait to hand back the Facebook task on the claimant's return from maternity leave. Mr. Melia he appeared at times to the Tribunal to have a selective memory. He stated he had not said anything about the claimant smoking something in respect of the KPI work but this was inconsistent with the reference by Mr. Kelly in his interview. Mr. Melia could be pompous and appeared to the Tribunal as a new person in the business attempting to make a mark for himself. His behaviour of sending out emails to a junior employee out of working hours and setting unreasonable tasks gave the impression of a heavy handed and micro management style. The claimant was the only person requested to attend the office. He copied all the team into an email about the claimant's late booking of a holiday which was an act of inappropriate management and humiliating for the claimant. Mr. Melia said that employees set their goals; a matter the Tribunal found to be incredible particularly as it was in direct contradiction to the evidence of Mr. Patton who stated as a manager he sets goals for employees.
118. The most unsatisfactory part of Mr. Melia's evidence was his suggestion that the claimant had threatened him in a phone call. This triggered the claimant to request his telephone records. He had not reported this to the police. There was no contemporaneous report or complaint to the claimant either. The respondent's position is that Mr. Melia was unable to provide his telephone records; the Tribunal concluded on the balance of probabilities that the claimant did not threaten Mr. Melia and this was a fabricated allegation. The Tribunal found the reference to the alleged threatening phone call from the claimant at paragraph 66 of his statement to be a fabricated allegation
119. Sarah Brindley who conducted the first grievance investigation was inexperienced. In her evidence to the Tribunal she said that the claimant did not say her grievance was about race; this ignored the express reference by the claimant to discrimination because of race.
120. Karen Hardwick senior HR acted as a note taker to Sarah Brindley. Ms. Hardwick was an experienced HR manager. She had been very supportive of the claimant when the claimant raised a concern about the claimant's colleague. She encouraged the claimant to raise the concern and to appeal

if dissatisfied with the grievance outcome. The Tribunal was not persuaded that she was part of any conspiracy to allow the respondent to discriminate against the claimant.

121. There was a significant conflict of evidence between Jon Patton and Mr. Melia concerning the new opportunity in HEC. Mr. Patton said that the job needed to be signed off and was at a very early stage. Mr. Melia had informed the claimant in a conversation on 13 September she could transfer to the HEC role instantaneously. The Tribunal found Mr. Patton to be a credible and honest witness. The contradictions in his evidence with Mr. Melia's evidence led the Tribunal to consider that the respondent saw the claimant as a problem and sought to move her on to another department.
122. Nicola Hill, Process Support Manager heard the claimant's second grievance in 2021. It was her first grievance investigation. This grievance was detailed and complicated. She appeared to be led by HR and did not mention in her evidence reference to the commissioning officer. She failed to check whether goals were set in the team and there appeared to be a lack of independent assessment of the claimant's complaints.
123. Mark Hull, Digital Energy Services Director dealt with grievance appeal. He provided straightforward and clear evidence.
124. Mrs. Whittington was the dismissing officer. She held the position of OEM Sales Director and was a confident and robust witness. The Tribunal on hearing her evidence found her not to be persuadable and was an independent decision maker.
125. Mr. Yeeles, VP for Industrial Automation, heard the appeal against dismissal and gave straightforward evidence.

The Law

126. Direct discrimination.
Section 13 (1) of the Equality Act 2010 provides that a person A discriminates against another B if because of a protected characteristic A treats B less favourably than A treats or would treat others.
127. A complaint of direct discrimination will only succeed where the Tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. It is for the Tribunal to decide as a matter of fact what is less favourable. In order to claim direct discrimination, under section 13 of the Act, the claimant must have been treated less favourably than a comparator who was in the same or not materially different circumstances as the claimant whether the comparator is actual or hypothetical. The comparison must help to shed light on the reason for the treatment. Section 23 (1) of the Act stipulates that there must be no material difference between the circumstances relating to each case when determining whether the claimant has been treated less favourably than a comparator. In other words in order for the comparison to be valid, like must be compared with like a comparative must not share the claimant's protected characteristic.
128. The Tribunal should explore the employer's mental processes, that is, conscious or subconscious to discover the ground or reason behind the act in deciding whether discriminatory treatment was because of a protected characteristic. The focus should be on the reason why in factual terms why the employer acted as it did. In the case of **Shamoon v the Chief Constable of the Royal Ulster Constabulary 203 ICR 337** the House of

Lords held the issue essentially boils down to a single question : did the complainant because of a protected characteristic receive less favourable treatment than others.

129. Paragraph 3.14 of the EHRC employment code states that the motive or intention behind the treatment complained of is irrelevant. This means it will be no defence for an employer faced with a claim under section 13 (1) to show that it had a good reason for discriminating.
130. The protected characteristic need not even be the main reason for the treatment so long as it was an effective cause. The code confirms that the protected characteristic needs to be a cause of the less favourable treatment but does not need to be the only or even the main cause see paragraph 3.11. An employer behaving unreasonably does not necessarily mean there has been discrimination but it may evidence a supporting inference if nothing else to explain behaviour see **Anya v the University of Oxford 2001 ICR 847**.
131. The EHRC code makes it clear that the circumstances of the claimant and the comparator need not be identical in every way but what matters is that the circumstances which are relevant to the claimant's treatment are the same or nearly the same for the claimant and the comparator (see paragraph 3.23). The fact that a different decision maker was involved in the comparative case does not necessarily amount to a material difference for the purpose of identifying that person as a comparator. However, there may be cases where the difference in decision maker amounts to a material difference. Where there is no actual comparator the treatment of a person who does not qualify as a statutory comparator because the circumstances are in some material respect different may nevertheless be evidence from which a Tribunal may draw a hypothetical statutory comparator would have been treated in the absence of an actual comparator (that is a real person who is in materially the same circumstances as the claimant but who was not suffered the same treatment the question of less favourable treatment needs to be determined by reference to a hypothetical comparator who resembles the claimant in all respects).
132. Section 212 (1) of the Act provides that detriment does not subject to subsection (5) include conduct which amounts to harassment. Section 212 (5) of the Act provides that where this Act disapplies a prohibition on harassment in relation to specified protected characteristic, the disapplication does not prevent conduct relating to that characteristic from amounting to detriment for the purposes of discrimination within section 13 because of that characteristic. In other words, harassment and direct discrimination are mutually exclusive. Where the Act provides explicit harassment protection, it is not possible to bring a claim for direct discrimination by way of detriment on the same facts.

Burden of proof

133. The burden of proof pursuant to section 136 of the Equality Act 2010 provides "if there are facts from which the court could decide in the absence of any other explanation that a person a contravene the provision concerned the court must hold that the contravention occurred. If a tribunal cannot make a positive finding of fact as to whether discrimination has taken place it must apply the shifting burden of proof in **Laing v The Manchester City Council 2006 ICR 1519**. If the Tribunal is satisfied that the reason given by

the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter.

Harassment

134. Pursuant to section 26 of the Act, harassment is defined as “a person A harasses another B if A engages in unwanted conduct relevant to a protected characteristic and (b) the conduct has the purpose or effect of (i) violating B’s dignity or (ii) creating an intimidating hostile degrading humiliating or offensive environment to B. (4) in deciding whether conduct has the effect referred to in section 1(b) each of the following must be taken into account namely (a) the perception of B; (b) the other circumstances of the case (c) whether it is reasonable for the conduct to have that effect.
135. There are three essential elements of a harassment claim under section 26 (1) unwanted conduct; that has the prescribed purpose or effect; and which relates to a relevant protected characteristic.
136. The Equality and Human Rights Commission's Code of Practise on Employment notes that unwanted conduct can include a wide range of behaviour including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person surroundings or other physical behaviour see paragraph 7.6 of the Code.
137. The Tribunal must consider whether the conduct in question is related to the particular characteristic in question in **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam (2020) IRLR 495** the EAT held that the question of whether conduct is related to a protected characteristic is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it. The fact that the complainant considers that the conduct related to a particular characteristic is not necessarily determinative nor is a finding about the motivation of the alleged harasser.
138. The Code also provides at paragraph 7.9 that unwanted conduct “related to” a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic. Whether a single act of unwanted conduct is sufficiently serious to found a complaint of harassment is a question of fact and degree. The test relating to “effect” has both subjective and objective elements to it. The subjective part involves the Tribunal looking at the effect that the conduct of the alleged harasser A has on the complainant B. The objective part requires the Tribunal to ask itself whether it was reasonable for B to claim that A’s conduct had that effect.

Unfair dismissal

139. Pursuant to Section 98 (1) of the Employment Rights Act 1996 an employer has the burden of showing the reason for the dismissal and that the reason falls within subsection (2) or some other substantial reason of a kind so as to justify dismissal.
140. In relation to the fairness of the dismissal section 98 (4) states where the employer has fulfilled the requirements of subsection (1) the determination of the question whether the dismissal is fair or unfair having regard to the reasons shown by the employer (a) depends on whether the in the circumstances including the size of the administrative resources of the employees undertaking the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and (b) shall be determined in accordance with equity and the substantial merits of the case.

141. The Tribunal must not substitute its judgement for that of a reasonable employer in deciding whether or not the employer acted reasonably for the purpose of section 98 (4). The tribunal should ask itself whether or not the decision to dismiss fell within the range of reasonable responses of a reasonable employer.
142. The Tribunal must not substitute its judgement for that of a reasonable employer in deciding whether or not the employer acted reasonably for the purpose of section 98 (4). The tribunal should ask itself whether or not the decision to dismiss fell within the range of reasonable responses of a reasonable employer. A harsh decision to dismiss can still be a fair one.
143. In respect of a conduct dismissal according to the case of **BHS v Burchell 1980 ICR 303** the tribunal must consider a threefold test; (a) whether the employer leave the employee was guilty of misconduct (b) whether the employer had in his mind regional grounds upon which to sustain that belief; and at the stage at which the employer form that belief on those grounds he had carried out as much investigation into the matter as was reasonable in the circumstances.
144. In **Sainsbury's Supermarkets v Hitt 2003 IRLR 23** the Court of Appeal ruled that the relevant question is whether the investigation fell within the range of reasonable responses that a reasonable employer might have adopted. In considering procedural fairness the tribunal can have regard to the HS code of practise of 2015 on disciplinary and grievance procedures which sets out the basic requirements of fairness applicable in most cases.
145. In the Court of Appeal case of **Taylor v OCS Group Limited 2006 IRLR 613** it was stressed that the task under section 98 four of the employment rights act 1996 is not only to assess the fairness of the disciplinary process as a whole but also to consider the employer's reason for the dismissal as the two impact on each other when employees dismissed for serious misconduct a tribunal might well decide that notwithstanding some procedural imperfections the employer acted reasonably in treating the reason as sufficient to dismiss the employee further whether misconduct is of a less serious nature so the decision to dismiss is near the borderline the tribunal might well conclude that a procedural deficiency had such impact that the employer did not act reasonably in dismissing the employee defects in the original disciplinary hearing and pre dismissal procedures can be remedied on appeal it is not necessary for the appeal to be by way of a rehearing rather than review but the tribunal must assess the disciplinary process as a whole and where procedural deficiencies occur at an early stage the tribunal should examine the subsequent appeal hearing particularly its procedural fairness and thoroughness and open mindedness of the decision maker.

Time

146. Pursuant to section 123 (1) of the Equality Act 2010 proceedings under the Act may not be brought after the end of the period of three months starting with the date of the act to which the complaint relates or be such other period as the employment thinks just and equitable. Section 123(3) provides that conduct extending over a period is to be treated as done at the end of the period.
147. When exercising discretion to allow out of time claims to proceed Tribunals may have regard to the checklist contained in section 33 of the limitation act 1980 see **British Coal Corporation v Keeble 1997 IRLR 336**.

Keeble states the section 33 factors are : considering the prejudice that each party would suffer if the claimant were allowed or not and have regard to all the circumstances of the case in particular (a) the length of and reasons for the delay (b) the extent to which the cogency of the evidence is likely to be affected by the delay (c) the extent to which the party sued has cooperated with any request for information (d) the promptness with which the claimant acted once he or she knew of the facts giving rise to the cause of action; (e) the steps taken by the claimant to obtain appropriate advice and once she knew of the possibility of taking action.

148. In the Court of Appeal decision **Adedeji v University Hospitals Birmingham NHS Foundation Trust 2021 EWCA Civ 23** stated that the Keeble factors should not be taken as a starting point for the tribunal's approach to the just and equitable extension. The best approach for a Tribunal when exercising the discretion is to assess all the factors in the particular case that it considers relevant including in particular the length of and the reasons for the delay.
149. In respect of continuing acts **Barclays Bank v Kapur 1991 I CR 208** it was established where an employer operates a discriminatory regime rule practise or principle then such a practise will amount to an act extending over a period. Where however there is no such regime rule practise or principle in operation and act that affects an employee will not be treated as continuing even though that act was continuing consequences which extend over a period. In the case of **Commissioner of Police of the Metropolis v Hendricks 2003 ICR 530** the Court of Appeal stated that a Tribunal should not get caught up on discerning whether there is a policy regime practise rule or practise in determining whether there is a continuing act. The Tribunal should look at the substance of the allegations and where there are a series of connected acts that may suggest a continuing state of affairs that continuing state may amount to a continuing act. **Aziz V FDA 2010 EWCA Civ 304** stated that in deciding whether separate incidents constitute part of a continuous act one has regard to whether the same individuals or different individuals were involved; this is a relevant factor but not conclusive. In the EAT case of **Southwestern Ambulance Service NHS Foundation Trust v IRLR 168** establishes that where a claimant wishes to assert that there is a continuing act or an act extending over a period of time there must be findings made that there have been discriminatory acts committed by the respondent in order to form part of an act to extend over a period of time or a continuing state of affairs.

Submissions

150. Both parties provided detailed written submissions and supplemented these with oral submissions. The Tribunal sets out a summary below.
The respondent's submissions
151. The respondent submitted the claimant's written submission consisted of a number of matters which the claimant had failed to raise in evidence. The respondent submitted that Mr. Melia had the misfortune of being the claimant's line manager. The claimant had the ability and the intelligence with a level of cunning to paint a picture to suit her. She changed her case to African rather than Caribbean; this was not the claimant's pleaded case. Mr. Melia was unaware of the claimant's background as Caribbean throughout the course of her employment into her team.

152. The respondent submitted that the time point is important here that before 14 July 2022 any allegations are potentially out of time. In respect of the claimant's first claim, any issue prior to 14 November 2021 is out of time. The respondent submitted there was no continuing state of affairs (see the case of Lyfar) because there is a clear division of time between acts and claims. Mr. Melia's appointment as the claimant's line manager was an utterly different way of management. Prior to his appointment, the claimant was left to her own devices. The claimant lodged her first grievance; and did not appeal and rejected mediation. It was submitted that all of her complaints concerning her professional relationship with Mr. Melia are out of time. In September 2020 her first claim was brought in 2022. The Tribunal should take account that Ms. Brindley could not remember as it is a long time ago and it is not just and equitable to extend time. The Tribunal should take account of the passage of time which has inevitably damaged forensically the respondent's evidence.
153. There is a dispute of evidence as to whether Mr. Melia repeated any comment about the claimant smoking something the claimant desperately relates to this to discrimination and her Rastafarian hair style. In fact this is a phrase used in normal conversation and is not related to race. The effect on the claimant was warped and she is hypersensitive. The fact that the claimant commences covert recording is that she trusts nobody. The recording of the meeting which the claimant alleges to be discriminatory showed Mr. Kelly being friendly and welcoming. It can not be related to race. The respondent relied upon the case of **Grant v Land Registry**. There was no ill intent no act of discrimination; even if upset the claimant was upset and in any event the respondent does not accept that the claimant has become upset of idle conversation to consider otherwise would be hypersensitive.
154. Fundamentally in respect of the burden of proof, there is no inference to be drawn here since the claimant's case is built on a hunch or paranoid hunch with no supportive evidence.
155. The respondent submitted that the pregnancy and maternity claim must fail because all acts took place outside of the protected period. The claimant returned to work on 6 September; it was practical to complete a handover for 23 September as Rosi Waite was finishing off a piece of work. The time gave the claimant an opportunity to C update herself. The respondent took steps to investigate an alternative role with the claimant; she was not forced into a new job. She anticipates something negative will happen to her. She was not required to move her job. The claimant continually failed to provide a timesheet. She hated Mr. Melia because of it. She alleged because she was required to comply with an instruction it was because she was black.
156. In respect of the claimant's dismissal she failed to appeal the first warning. She was unable to deny that she was guilty of misconduct. As a result she received a warning. The claimant then alleged Mr. Melia was victimising her in an email; this was an undeserved accusation. The respondent was entitled to reach the conclusion that the claimant made the allegation in bad faith and dismiss the claimant under the totting up process. The claimant would have dismissed fairly in any event as she was out of control in respect of her behaviour towards her manager. There should be a 100% Polkey or contributory fault finding.

Claimant's submissions

157. The claimant submitted she tried to get her voice to be heard and that resulted in an unfair dismissal. Since July 2020, she had been living like a zombie. She was telling the truth of what has happened. The claimant submitted that paragraph 66 of Mr. Melia's witness statements alleges she telephoned him and threatened him and his wife's employer; this was untrue along with his failure to provide telephone records.
158. The claimant submitted that Mr. Frew's point that she was hypersensitive and paranoid is untrue. She was left damaged and vulnerable at the hands of Mr. Melia, Mr. Kelly and Ms. Hardwicke and Hannah Butley Jones. Her January 2022 performance review was poor and Mr. Melia treated her like this because she was black. The smoking comment was racial; I had my hair in braids.
159. The claimant alleged that S. Brindley falsified evidence. Mr. Melia sought to place her on a performance review. There was no gap in the ill treatment of me; the respondent was constantly going for me. The only gap was maternity leave but there were two incidents where I was being treated me differently. Mr. Melia discriminated against me because I am black. I raised the grievances; and lodged claims because I am black. I did protected acts and he treated me terribly. Mr. Kelly's diverse people comment was at my return to work and announced in the team meeting. He said I was kind of taking my rights. I was dismissed from the respondent because I am black.
160. I have questioned all 8 witnesses. Mr. Melia and Mr. Kelly were assisted by Ms. Hardwicke, Mrs. Whittington, Mr. Yeeles; there were a lot of players. Mr. Melia has lied about me chasing shadows; for me to set goals of performance is ridiculous along with awarding me zero bonus.

Conclusions

What was the principal reason for dismissal and was it potentially fair one in accordance with sections 98 (1) and (2) of the Employment Rights Act 1996 (ERA)? The respondent asserts it was misconduct

161. The Tribunal found that the reason for dismissal was misconduct. On 16 June 2022 the claimant had received a first written warning from Simon Coleman Customer Project Office Leader for failing to adhere to management instructions and submit her time sheets in a timely manner. The claimant admitted there was a backlog of about 3 months of timesheets; see page 1081;10844-1095,1108-1110. The claimant did not appeal this warning and there was no suggestion that warning was imposed in bad faith. Completion of time sheets was raised in February 2019 at the Leeds meeting and the team were made aware of the need to submit time sheets. She was requested by her manager to complete the timesheets and she failed to do so.
162. Rachel Whittington, OEM Sales Director chaired the re-scheduled disciplinary meeting on 14 July 2022 (page 1129-1130). The claimant was accompanied by her trade union representative Geoff Saunders. Ms. Whittington did not accept that the claimant had sent the email page 794-5 by mistake because the claimant at no time had attempted to recall the email. The claimant was given the opportunity to state in the hearing what was victimising about her manager's communication to her. The claimant

was unable to identify anything. Rachel Whittington believed the email to have been sent in bad faith and the claimant could have raised a formal grievance and it was inappropriate to send the email to her manager and copy in a colleague. Ms. Whittington determined that the claimant's actions were pre-meditated and an attempt to undermine her manager in front of a colleague. The claimant came across as aggressive, intimidating and insubordinate. Ms. Whittington concluded the email was vindictive and nasty. It was concluded it was a breach of the company's disciplinary procedure because it breached the bullying and harassment policy. Her conduct showed a complete lack of ability to manage herself, follow procedures or guidance from superiors and was not in line with the respondent's core values (see page 215).

163. If so was the dismissal fair or unfair in accordance with ERA section 98(4) and in particular did the respondent in all respects act within the so-called band of reasonable responses? The claimant relies on the following

(a) the dismissal relied on a first written warning of June 2022 which the claimant says was unfair because such a disciplinary penalty was not merited by her actions because other people in the team did the same thing and were not disciplined

Chris Davies at page 774 stated that there were times when his time sheets were some two months behind and he was requested to get these up to date. He recalled others were behind and were told to get up to date in team meetings. Other employees were not disciplined for failure to submit timesheets but the Tribunal has a lack of information to compare the claimant's situation with others (see **Hadjioannou v Coral Casinos Limited**). The claimant did not seek to appeal the warning about timesheets.

(b) the claimant says that the e-mail to her manager of 10 June 2022 for which he was dismissed was not inappropriate or offensive as alleged by the respondent

In the course of the hearing before Ms. Whittington the claimant said the sending of the email was a mistake and could not identify anything that was victimising about the email sent to her. The claimant made observations about the general treatment by her manager towards her. The Tribunal found the claimant's case before the Tribunal as inconsistent with the position she stated at the disciplinary hearing namely that she had not intended to send it. The respondent was entitled to reach the conclusion that the email was inappropriate and offensive in the context of the failure by the claimant to identify the victimisation contained in the email sent to her by her manager in the course of the disciplinary hearing.

(c) the disciplinary decision maker had pre made her decision. When the claimant asked to introduce new evidence she told the claimant she was trying to throw a spanner in the works. She did not listen to the claimant's arguments that she had sent the e-mail on 10 June in good faith and expressed an opinion that the claimant just did not like her boss

Miss. Whittington was a robust witness and not persuadable. The Tribunal rejected the claimant's contention that this witness pre-made her decision; from the notes of the hearing the claimant was given an opportunity to state her case. The claimant was given ample opportunity

to include evidence prior to the hearing and reminded of this entitlement; she failed to do so. Miss. Whittington was entitled to consider that the claimant was seeking to delay and deflect. A reasonable employer and Miss. Whittington was entitled to reach the conclusion that the email was not sent in good faith following the claimant's concessions that she was unable to identify what was wrong with her manager's email correspondence to her and that she did not mean to send it.

(d) it was unfair to dismiss instead of giving a final warning

Pursuant to the respondent's disciplinary policy it is entitled to tot up sanctions. At the time of the disciplinary hearing, the claimant already had a written warning. The claimant did not seek to appeal this warning. The respondent reached the conclusion that the act of accusing in bad faith her manager of victimisation was a disciplinary matter. The respondent was entitled to add this sanction to the written warning and dismiss the claimant. The Tribunal finds although this was a harsh decision it was a decision that a reasonable employer could reach having determined to add the sanctions together under the policy. Miss. Whittington did consider other sanctions.

(e) the decision to dismiss was an act of race discrimination and victimisation

The claimant did not identify an actual comparator. The Tribunal determined a hypothetical comparator was likely to be treated in exactly the same way. In any event the Tribunal determined that the real reason for the dismissal was the finding of the dismissing officer that the claimant had committed a serious misconduct and she totted this up under the disciplinary procedure; the claimant already had a warning in place.

(f) the appeal panel refused to listen to her audio evidence in its entirety and had pre-made their decision

The appeal chair determined that the audio evidence was not relevant to its determination. It was entitled to reach this conclusion because the claimant was dismissed for the email she sent to her manager. The Tribunal rejected the appeal officer had pre-made the decision. The claimant was given an opportunity to put her case but the respondent disagreed with the claimant's contentions. The unfair dismissal claim is not well founded and is dismissed.

Direct race discrimination

164. On or around 20 March 2020 Carl Melia telephoned the claimant and ordered her not to purchase the IACCM course because it was too expensive for her to pay for without her Amex card. The purpose of this call was to set the claimant up to make a mistake and also that the claimant would fail to pass the course before 31 December 2021.

The background to this allegation is that Mr. Kelly had informed the claimant that the IACCM course would be available for all staff. The claimant informed Mr. Kelly she was thinking about purchasing this course out of her own money. At the material time the claimant's AMEX card was out of date and could not be used. At the time of the conversation between Mr. Melia and the claimant, in March 2020, the completion of this course was not a performance goal for the claimant. The Tribunal determined that the

respondent did seek to discourage the claimant from purchasing the course at the time but the real reason for the treatment was because the claimant did not have a valid AMEX card and it was a significant cost to the claimant personally. The Tribunal did not find that Mr. Melia set the claimant up to make a mistake and that the claimant would fail to pass the course before the end of December 2021. This allegation fails.

165. Carl Melia sent the claimant an e-mail on 25 March 2020 page 336 titled "check in" he advised the claimant that he was checking in to see if she was OK this e-mail was insincere in the light of the telephone conversation of 20 March

On 25 March 2020 at page 336 Mr Melia emailed the claimant checking to see if she was "OK". He stated that he would have skyped the claimant but the claimant appeared to have been offline from Skype the past couple of days. *Give me a call if you want to discuss anything* (p.337). The claimant's response is that she had been better. The claimant had been distressed and upset on 7 February because her son was admitted to hospital with pneumonia. However, by 10 February he was discharged. At (page 506) mid-March 2020, Mr. Melia was having a discussion with Mr. Kelly because Mr. Kelly had concerns that the claimant was not doing anything. Mr. Melia and Mr. Kelly sought advice from HR, Mr. Nick Stockley at that time; "that was the gist of the discussion". Mr. Melia evidence's (repeated in his interview into the claimant's grievance dated 3 September 2020 page 492) is that the week before lockdown the claimant was fine. He stated he wished to alleviate the claimant's stress, that is why he made the offers at page 382. This was inconsistent at page 492 when he said that the claimant the week before lockdown seemed quite good. In early February to mid-March was ok page 493. There were 2 incidents of upset; one in February (when the claimant's son was in hospital) and a later issue in April. The claimant's account is that in jest (see page 378A) she said that she was getting palpitations and turning grey thinking about how next week is going to pan out and her child was bouncing around. On 17 April the claimant disclosed that a COVID twitcher had reported that her child was on a Juliet balcony. The claimant stated in her email dated 22 April 2020 page 378A that Mr. Melia's concern was and is unjustified. The Tribunal determined on the balance of probabilities that Mr. Melia was not sincerely checking on the claimant's welfare the claimant's concerns arose in February. The claimant had a conversation with Mr Melia on 20 March 2020 about her timesheets the claimant had told Mr Melia on 20 March page 333 that the first time sheet will be provided today. At page 383 on 20 March Mr. Melia offered the claimant a number of options effectively to reduce her working time. In the circumstances the Tribunal found that the check in was insincere. There was less favourable treatment inadequate explanation of the respondent the Tribunal find it was by reason of race. This allegation succeeds.

166. Mr. Melia attempted to gaslight the claimant by repeatedly trying to convince her that it's OK to not be OK. The claimant had to reiterate over and over again that she was fine and had no reason to not be OK.

There is a dispute of evidence. Mr. Melia said that the claimant was upset in a meeting and involved HR for a well-being discussion. Karen Hardwick contacted the claimant by email on 21 April 2023 (page 377) and confirmed she was ok. Karen Hardwick noted that the claimant had no well-being concerns and therefore the respondent would not hold a well-being meeting.

The claimant was not unwell. The claimant had initially accepted the well-being meeting and then declined it. The claimant had disclosed an event with a curtain twitcher and reporting her to the police. The Tribunal found that Mr. Melia handled the situation insensitively but rejected the claimant's contention that this was an act of direct race discrimination or harassment related to race.

167. Carl Melia proposed that the claimant book 2.5 days per week to a time sheet code that would have rendered her non-productive and the claimant discovered it was only to be used by project managers
Mr. Melia did propose to the claimant that she could book 2.5 days per week to the NP11 -waiting non chargeable see page 382. The booking of this code appeared to be because it was difficult for the claimant to obtain codes for her work. The Tribunal concluded that this was not less favourable treatment related to race or unwanted conduct related to race.
168. Carl Melia offered to the claimant to have up to 18 weeks parental leave which the claimant subsequently found out was unpaid
This allegation ties in with the welfare check Mr. Melia made with the claimant. On 21 April 2020 (page 382) the claimant noted that Mr. Melia had offered her parental leave but she did not need it. The Tribunal found that Mr. Melia dealt with this in a clumsy manner but was not satisfied that the reason for the treatment was direct race discrimination or harassment related to race.
169. Carl Melia tried to make the claimant take random annual leave. In particular in early December 2020 Carl Melia telephoned the claimant and tried to coerce her into taking specific annual leave dates that differed to the ones that she had already entered. Carl Melia attempted to coerce the claimant to cancel her scheduled annual leave
Mr. Melia's evidence was inconsistent. On 11 October 2021 he could not recall the conversation about changes to annual leave page 828. In his witness statement he said the claimant could change her dates.
170. The claimant explained she had specific plans for the dates she had booked but Carl Melia kept trying and trying to convince her to change the dates. He eventually gave up. The claimant believes that the reason behind this call was to prevent her from working whilst he was on annual leave.
171. The Tribunal found that Mr. Melia tended to be heavy handed and micro manage namely the claimant should take leave when it suited him. The Tribunal was not satisfied that this was direct race discrimination or unwanted conduct related to race .
172. Carl Melia took away the responsibility of quarterly KPI reporting from the claimant and then set her a goal relating to KPI reporting which she failed.
On 27 March 2020 (page 342) Mr. Melia set the claimant the task of completing a KPI report by Tuesday pm. Mr. Melia wanted the report from the claimant so that he could review it before passing to Mr. Kelly. The claimant completed the report by 7am in the morning and sent it to Mr. Melia. A discussion took place between the claimant and Mr. Melia and following this discussion the report was updated by the claimant and sent to Mr. Melia at 11.22 a.m. (page 342) on 31 March 2020. Mr. Melia informed Sarah Brindley during the grievance interview there were further submissions required but this was not evidenced in the documentation before the Tribunal. He said he had not checked it before passing it to Mr.

Kelly. Mr. Melia told the Tribunal that the report was billions of pounds out; see page 850. He suggested that the claimant was doing the task long enough to know her figures were not right but still presented it. He said he had to work on it with Mr. Kelly until 9 pm at night. He disputed in answer to the claimant's questions that he had manipulated the claimant's work on the report prior to submitting it to Mr. Kelly. The claimant was experienced and competent in KPI collation so it would be unusual for her to make a mistake. On 12 May 2020 (page 388) he requested the claimant to complete the KPI report. The claimant contacted Mr. Webb to obtain relevant data (see page 389 on 13 May); he was unable to provide the information by 18 May so Mr. Melia provided an estimate. Mr. Melia intended to discuss with Kathryn Hall over the telephone and in answer to the claimant's request to join the call said she could. He did not invite the claimant to join the call. His case is because he was discussing other issues with Ms. Hall. The Tribunal determined on the balance of probabilities that Mr. Melia did not invite the claimant to join the call because he did not want her to be involved in KPI any longer. The claimant could have been dialled in and out of the call but Mr. Melia did not consider this option. The KPI task actually became automated.

The claimant was set a target re KPI to complete by end of 2020. This was in fact a team goal. The claimant and Mr. Melia described the claimant's progress as partially on target (see page 259). Mr. Kelly said at page 803 it was a team target and he believed that it was an error to suggest that the claimant was partially on target. There was no adequate explanation by Mr. Melia as to why he should remove this goal from the claimant but then suggest she had individually failed (as it was a team goal). The Tribunal determined that this was less favourable treatment and by reason of the inadequate explanation from Mr. Melia was related to race.

173. The claimant rejected Mr. Melia's request to redistribute her work to the end user projects team as they were severely lacking in work.

The claimant changed this original allegation to her rejecting calls from Mr. Melia to redistribute her work. The claimant says that Chloe Banford end user projects in March 2020 and Mr. Melia agreed she was part of the team.

174. In the context that Mr. Kelly and Mr. Melia did not think that the claimant was doing any work and sought HR advice from Mr. Nick Stockley in mid-March 2020, (page 506), Mr. Melia stated "that was the gist of the discussion", it appeared to the Tribunal entirely inconsistent to try and remove work from the claimant. The claimant's case is that the above conduct of Carl Melia was part of an attempt to remove the claimant from the business and make her look as close to non-productive as possible so as to pave the way for Rosi Waite to take her job. The claimant alleges that Mark Kelly and Karen Hardwick were overseeing this attempt. The Tribunal concluded it was nonsensical to seek to remove work from the claimant when there was a concern about what she was doing and led to the inference that Mr. Melia did wish to remove the claimant from the role. In the context that the respondent accepts that the claimant was competent; had expressed a preference to keep Rosi Waite, the white contractor, the Tribunal concluded that the respondent's treatment was because of the claimant's race. This allegation succeeds.

175. Prior to starting his employment with the respondent Mark Kelly informed the claimant's line manager at the time Stuart Donovan that he was

considering making her a business data analyst. However once Mark Kelly met the claimant in person the opportunity never materialised.

This allegation from the claimant required the Tribunal to infer that on meeting the claimant and discovering she was a black employee that Mr. Kelly withdrew an offer of employment. The Tribunal did not have the benefit of hearing from Mr. Kelly or Mr. Donovan; both individuals are no longer employed by the respondent. Even on the claimant's allegation, Mr. Kelly was merely considering making the claimant a business analyst; he had offered the post or determined that he would do so. The Tribunal found that simply considering did not mean any firm job offer at all and did not see that the claimant had established a prima facie case of discrimination. This allegation fails.

176. On 20 March 2020 Carl Melia telephoned the claimant with a range of options that would result in her taking time off work or making herself appear non-productive and underutilised. The purpose of this call was to set the claimant up to fail and look like a worthless employee who was right for redundancy or dismissal

On 20 March 2020 Carl Melia contacted the claimant. By this point he had already met with Mr. Kelly and Mr. Stockley HR because Mr. Kelly did not think that the claimant was doing any work (page 506). The options presented to the claimant by Mr. Melia are set out in the claimant's email dated 22 April 2020 (see page 382). Some of the options proposed by Mr. Melia to the claimant included book 2.5 days per week to the NP11 waiting non chargeable timesheet code. The Tribunal finds that was because there was a difficulty in obtaining codes. Mr. Melia also suggested the claimant take parental leave and take any annual leave for the foreseeable future. The claimant noted in this e-mail that she was acutely aware that the EUP team were severely lacking in work but "*I do not need to have any of my work redistributed especially as I wish to remain as close to 100% productive as possible.*" The absence of the claimant from the business or removal of her responsibilities could make the claimant appear non-productive and underutilised. The Tribunal determined that the suggestions of Mr. Melia of delegating her work to EUP in the context that both he and Mr. Kelly believed that the claimant was not doing any work to remove more responsibility from the claimant would make the claimant look entirely unproductive which could set the claimant up to fail and appear to be a worthless employee right for redundancy and dismissal. Mr. Melia's evidence is that this was not his intention and he was concerned for the claimant's welfare. The Tribunal found that Mr. Melia had been concerned for the claimant's welfare but that the suggestion to remove work from her to make her look unproductive was disproportionate to that concern and the Tribunal found opportunistic Mr. Kelly's view that the claimant was not doing anything. Mr. Melia's concern and that of Mr. Kelly in mid March 2020 was that the claimant was not doing any work and he stated in the grievance interview that the week before lockdown the claimant seemed quite good (page 492); that is there were no concerns for her welfare. The Tribunal concluded that the respondent was seeking to remove the claimant from the organisation and by allowing the claimant to take time away from the business or pass some of her responsibilities to others the claimant could look under productive and underutilised. The respondent denies this is the case. The Tribunal determined that the reason for the treatment was the fact

that the respondent preferred the contractor Rosi Waite, the white employee above the claimant who was black. This allegation succeeds.

177. In a telephone call on Tuesday 31 March 2020 Carl Melia said to the claimant that due to lockdown all subcontractors have been let go; “we wanted Rosi but Mark and I were shut down and told we had to have you”. The claimant felt worthless and insecure as her manager and his manager had wanted to select a subcontractor to remain in employment in place of her who was an employee.

Mr. Melia denied that he made this comment when interviewed as part of the grievance investigation on 11 October 2021 see page 836. The Tribunal preferred the claimant’s evidence that on the balance of probabilities Mr. Melia did say this to the claimant. Mr. Melia and Mr. Kelly had reached the view by mid-March 2020 that the claimant was not doing any work. The Tribunal concluded that Mr. Melia and Mr. Kelly did prefer the white contractor Rosi over the claimant as a black employee. The claimant was treated less favourably because of her race. This allegation succeeds.

178. Carl Melia and Mark Kelly made the claimant feel excluded during weekly team chats.

The Tribunal found that the claimant did feel excluded during weekly team chats because some of the discussion tended to be about football which the claimant due to her lack of knowledge and interest did not have anything to say. The Tribunal determined that this treatment had nothing whatsoever to do with the claimant’s race nor did it amount to unwanted conduct related to race. This allegation fails.

179. On 7 April 2020 Elaine Kelsey replied to an e-mail from Rosi Waite asking on the claimant's behalf for access to information. Elaine's response indicated that she was reluctant to give the claimant a black employee full access but she had no problem giving that access to Rosi Waite who was a white subcontractor.

The Tribunal did not have the benefit from hearing from Elaine Kelcey or Rosi Waite. However, both were she interviewed as part of the grievance investigation in October 2021. At page 648, it is noted that *“I asked Elaine to clarify the process to granting additional access to employees which Elaine confirmed when a request comes in she would seek manager approval and would challenge the scope of access. This is due to Elaine being challenged previously in regards to GDPR compliance and as she has had these discussions it is at the forefront of her mind when she receives another request. It turned out Gemma only needed access to 30 individuals not the whole of the UK and Elaine worked with Gemma to establish a work around to enable her to have the access required for her role and for us to remain GDPR compliant.* Elaine confirmed she would only view an employees IDS profile to obtain their managers details. The approval denial process is the same for all employees and was only for 30 employees. This was considered a small amount so work around established a feasible solution. The Tribunal determined that what was not clarified by the investigator was how an independent contractor, Rosi Waite, who was not an employee obtained greater access to data than the claimant, who was an employee. This was a large evidential gap in the respondent’s evidence. This was not clarified in the interview with Elaine Kelcey or Rosie Waite’s interview either

in October 2021 (page 791 to 794). The Tribunal found the heavy restrictions here in respect of access for the claimant employee and wider access for the independent contractor did not make sense. Rosi Waite in her email dated 2 April 2020 page 354 had stated that the claimant had her own personal log in for concur but would need UK Audit permissions "*the same as I have had during my contract*". In the context that the Tribunal has found that the respondent was seeking ways to remove the claimant from the organisation, the Tribunal determined that this less favourable treatment did raise a prima facie case of discrimination for which there was no reasonable explanation put forward as to the different treatment of the claimant (now undertaking Rosi's role) and Rosi's treatment. This allegation succeeds.

180. Carl Melia and Mark Kelly attempted to starve the claimant of work to make her appear as a liability to the company rather than an asset.

The Tribunal found this allegation to be well founded in the context of seeking to remove some of the claimant's work to EUP. The Tribunal noted the evidence that the KPI system became an automated system; namely there was a change of system so that the claimant did not have to conduct this function. Further the evidence in the context of the grievance investigation is that some work dried up because of the pandemic (Mr. Birch's interview page 817). However, Carl Melia had wanted to remove the claimant's work to the EUP team (page 382). In the context that he and Mr. Kelly did not think that the claimant was doing any work and had a meeting with HR to discuss this it did not make sense to the Tribunal why an employer would seek to further reduce the claimant's workload unless it was with the intention to make her appear as a liability to the company rather than an asset. The respondent flatly denied this allegation. The Tribunal determined that the claimant had established a prima facie case; the respondent was trying to remove her from the organisation; there was no adequate explanation from the respondent. This allegation succeeds.

181. In particular the claimant relies on Carl Melia telling Peter Birch in April not to give her any work as she was extremely busy working for Trevor Catley. At the same time Carl Melia was telling Trevor not to give the claimant any work as she was very busy working for Peter Birch. Carl Melia also asked Maddon Fernando if he wanted someone other than the claimant to support him.

This issue was not explored as part of the grievance investigation. Nicola Hill asked witnesses about the period following the claimant's maternity leave in 2021. Peter Birch was interviewed as part of the grievance investigation on 8 October 2021 (see page 816 to 822). He stated that (page 819) that he was directed to give the claimant back pretty much everything Rosi was doing with exception of Facebook activities. At his interview on 30 September 2021, p 744 Trevor Catley says Carl Melia contacted him when Gemma was coming back stating he didn't want to overdo it with her he said for the time being should be taking back on SAP responsibilities and to deal directly with her. There was insufficient evidence on this matter and the allegation fails as a direct race discrimination and harassment related to race allegation.

182. On 30 March 2020 Carl Melia sent the claimant an email asking her to input Christopher Davies timesheets. The claimant was asked to undertake the onerous task of backdating both her and Christopher Davies timesheets.

This would have resulted in doubling the claimant's workload whilst easing pressure on Christopher Davies.

Mr. Melia as the claimant's manager was entitled to instruct the claimant to undertake reasonable tasks. Christopher Davies was a contract manager and in a more senior position in the company to the claimant. The conduct in this role was onerous for the claimant as indicated by Mr. Davies in his email dated 26 March 2020 at page 338 "to access the timesheet system we need to go through Lotus notes which going back a couple of years ago was our e-mail system pre outlook. As I never use Lotus notes anymore I've forgotten my password and locked myself out.." On 30 March 2020 (page 340) the claimant reached out to Mr. Rajesh Bhatt who performed a password digest on Chris Davies Lotus notes account. The Tribunal did not find the instruction by Mr Melia to assist Christopher Davies to undertake the onerous task of backdating the timesheets was unreasonable or less favourable treatment. The claimant's role was to support contract managers. Mr Davies was in a more senior position to the claimant and it was a reasonable instruction from the claimant's manager. The Tribunal do not in the circumstances consider this to be less favourable treatment and the allegation fails as an allegation of direct race discrimination and harassment related to race.

183. On 2 April 2020 Carl Melia telephoned the claimant saying that Mark Kelly was asking what she was smoking as the figures she provided in the quarterly reports were incorrect and the claimant was being blamed. It subsequently transpired that the data the claimant was using to populate the report was correct and had been for some time but no apology was made to the claimant.

The Tribunal deals with this issue under harassment related to race.

184. On 1 April 2020 Carl Melia sent the claimant a text message at 1746 PM. This was outside of the claimant's contractual hours. She was requested to join the call that was in progress regarding cost alignment. The claimant felt she had no choice but to stop making dinner for the family and join the call. The claimant was able to work out what had gone wrong with Maddon Fernando. The claimant and Maddon Fernando were being blamed for errors in projects but the errors had in fact arisen because of financial postings by Andrew Webb the financial controller and cost changes made by Avania Hawkings.

This matter is dealt with under harassment.

185. On 2 April 2020 Carl Melia sent to the claimant a pointless time consuming exercise purely to increase her workload. The task the claimant was given was to review 235 missing projects.

Mr. Melia instructed the claimant on 2 April 2020 (page 364) copying in Mr. Donovan. He found a print out showing 235 projects from the data combined tab; He did not understand what happened to the projects and he said he could be missing something and there could well be a simple explanation but this abstracted data seems unusual. On 14 April 2020 (page 365) at 5.54 a.m the claimant completed the task. The projects were not in fact missing because the claimant had closed them. However, in order to establish this the claimant had to track through all the data to check this; it was a time consuming and the Tribunal found, pointless exercise. In evidence, Mr. Melia was vague as to how he had identified 235 projects; he thought he may have compared PDF and excel files; he could not recall.

The claimant put directly to Mr. Melia that he knew they were closed projects and he gave her this task because she was black. Mr. Melia refuted this instruction had anything to do with race. He was also asked why he had asked her to do this task. He replied he wanted to find out what the differences were and he did not feel the instruction was unreasonable as he was no expert. Mr. Melia said the claimant was chasing shadows which simply were not there. The Tribunal found troubling in the evidence was that Mr. Melia was unable to say how he had identified the 235 projects and further that he failed to send any response to the claimant following her completion of this onerous task. If it was so important and necessary, the Tribunal would have expected the manager to have given some feedback or thanks to the claimant; the absence of that was not explained in the Tribunal's judgment by discourteousness; Mr. Melia did not nor did he suggest how he would use the information given by the claimant. The Tribunal determined that Mr. Melia gave the claimant this onerous and pointless task and subjected her to less favourable treatment because she was black. He would not have treated a hypothetical white comparator in this way. This allegation of direct race discrimination succeeds.

186. On 18 May 2020 Carl Melia emailed the claimant with a separate spreadsheet breakdown of her timesheets and asked for an explanation for absolutely everything including who gave her permission to complete her training on my learning link. The claimant says that this was exercise was designed to frustrate her by increasing her workload to catch her out.

Mr. Melia was a manager who micro-managed the claimant to the point of oppression. Although as a manager he was entitled to enquire with the claimant how she was spending her time, the pressure in which he put the claimant under to provide minute details of every activity was oppressive and the Tribunal finds unnecessary. Mr. Melia made this request of the claimant on 18 May 2020 out of hours at 20.32 see page 400 and gave a deadline to the claimant of less than 48 hours to complete. The claimant actually provided the information but Mr. Melia came back to the claimant with more queries. The Tribunal determined that seeking a breakdown of a timesheet was a reasonable instruction but Mr. Melia wanted to know each and every detail of an activity. The Tribunal found this to be very heavy handed and indicated that Mr. Melia did not trust the claimant and was designed to frustrate the claimant by increasing her workload and to catch her out. The respondent treated the claimant less favourably by instructing her to perform this onerous task. The respondent would not have treated a hypothetical white comparator in the same way; Mr. Melia perceived the claimant to be untrustworthy and the tribunal found that this was because the claimant was a black employee. This allegation of direct race discrimination succeeds.

187. Between 1 and 3 July 2020 Carl Melia attempted to contact the claimant regarding her time sheets. He copied in Karen Hardwick to his last communication and this insinuated that the claimant had done something wrong.

From February 2020 the respondent had made clear that it wished employees to complete timesheets promptly namely every week. On 1 July 2020 (age 412) 1 July 2020 after work hours and on 2 July 2020 (page 414) at 18.23 Mr. Melia was chasing the claimant for her timesheets. Mr. Melia also left voicemail for the claimant (p.414). He emailed the claimant on

2.7.2020 (p.415) stating *“I've been attempting to speak to you regarding timesheets since late yesterday without success via mobile Skype and e-mail please find attached an extract from a spreadsheet I'm sent in regard to hours work booked for the CM team as part of a wider business spreadsheet. As you can see there appears to be no timesheets completed and submitted by yourself since the week of 4 May 2020 could you please explain this to me.”* In comparison a white employee Chris Davies stated in his interview on 5 October 2021 (page 774) that that he had a backlog of timesheets most of the time and was requested to get them up to date and he did so himself he stated there were times when his timesheets were two months delayed when he had a backlog of timesheets Mr. Melia did not raise backlogs of timesheets with him in 1 to 1s but it was more a thing discussed at team meetings and there would be a few of us timesheets are behind from these people need to get them up to date might have been a list every now and again and Mr Davies was on the list however he states it was never raised as a big issue to me that he was behind on them or that I was the only one or that it was unacceptable he was not subject to a performance improvement plan either. The Tribunal determined that the claimant was subject to less favourable treatment than the white employee Chris Davies. In the context that the Tribunal determined that the respondent wished to remove the claimant from the organisation, the Tribunal finds that this was less favourable treatment related to the claimant's race. This allegation succeeds.

188. On 3 July 2020 Carl Melia emailed the claimant and copied in the entire contract management team. He asked if the claimant had confirmed with her team members that they were OK with her being off on annual leave at such short notice. Another member of the team deemed the e-mail so degrading and humiliating to the claimant that they reported Carl Melia on the red line
The Tribunal deals with this allegation under harassment.

189. On 3 July 2020 the claimant emailed Carl Melia and asked for a considerably longer one to one so that she could discuss her career development. A meeting was arranged for 10 July 2020 but rather than discuss the claimant's career development the meeting changed into a performance management meeting. The version of events that Carl Melia provided in writing after the meeting included lies.

The Tribunal has dealt with this allegation as harassment.

190. On 15 July 2020 there was an e-mail exchange between the claimant and Carl Melia regarding an inversion invoice posting and an e-mail from Abhishek Gupta. Carl Melia feigned ignorance during the e-mail exchange.
The relevant correspondence can be found at pages 440 to 441. The Tribunal did not see anything untoward in this correspondence; there was simply an enquiry about the invoice and clarification as to what had occurred. This allegation of direct race discrimination fails. Further the Tribunal did not consider this innocuous incident to be unwanted conduct related to race; the allegation as harassment related to race fails.

191. On 15 July 2020 Carl Melia sent an e-mail to the team regarding IACCM progress knowing full well he had not told the claimant in March not to purchase the course the claimant had in fact purchased the course on 29 June 2020 and so had disobeyed his telephone instruction in March not to do so

On 15 July 2020 at page 452 Mr. Melia emailed the claimant along with Andrew Garthwaite and Peter Birch about IACCM certification update. He asked Andy, Gemma and Pete about an accreditation update. On 16 July page 453 the claimant responded that she had purchased the course; however she still needed to complete the initial 12 question assessment. She stated her goal was to attain accreditation by the end of the year. Tribunal could not disseminate this as an allegation of race discrimination or harassment related to race. This allegation fails.

180. Between 15 July 2020 and 5 August 2020 the claimant and Carl Melia had a weird and confusing e-mail exchange regarding the tender tracker The claimant relied upon pages p.443, 433 to 435; 459A; 460, 463-465; 48-468A to 469A and 470. The claimant did not understand Mr. Melia's reference to raw data; The claimant replied she was working the same template just copy and paste information Mr Davies Mr fan Fernando also not clear as to what Mr Melia meant. Mr Melia escalated it to Mr. Kelly. On 10 August 2020 the claimant sent Mr Melia the tender tracker created in the same way she had done before. It appeared to the tribunal that there was confusion by all parties. The Tribunal could not discern an allegation here of direct race discrimination or harassment related to race. This allegation fails.

192. On 25 January 2021 Carl Melia gave the claimant a very poor performance review. Carl Melia's assessment of the claimant differed starkly to her own self-assessment and the feedback she had sought from colleagues and managers. It also differed from the performance reviews which had been conducted by Stuart Donovan in previous years. The poor performance review given by Carl Melia resulted in the claimant being given zero bonus for the first time in her employment with the respondent. The claimant's performance review is set out at page 257-272. Mr Melia's assessment of the claimant in the performance review as an underperformer contrasted with the evidence he gave to the Tribunal that the claimant was competent. Mr. Warren described the claimant as a hidden star in the business; with bags of potential; with a fantastic attitude; keen to develop a career; utterly reliable and always responsive. He further stated matters outside of the claimant's control it's difficult for her to get the support from some project managers to allow her to book time to their projects which was not Gemma's fault. Katherine Mellor Jones also gave positive feedback. Mr Melia placed significant weight on the claimant's non completion of administrative tasks such as timesheets and expense claims and holiday leave. Mr. Melia also criticised the claimant for not being actively participate as a member in the strategic plan 2020. Mr Melia felt the claimant needed to improve in the contracts management team before she takes on the pre sales support role. Mr. Melia described the claimant that she was significantly below target in terms of her training because she'd indicated she was starting the IACCM qualification in March but she started in late 2020 and that has caused or inhibited her ability to complete the target the claimant's response was that she wasn't aware it was an actual development goal until late in the year she said she started the course and had completed approximately 2/3 of the modules she hopes to complete the course by the early first quarter of 2021. The Tribunal concluded that the assessment by Mr Melia of the claimant was harsh and unjust and

inconsistent with previous feedback of Mr Donovan and other managers commenting on her behaviour. The Tribunal determined that this was less favourable treatment; Mr. Melia would not have treated a white employee in the same manner he did so because the claimant was black. This allegation succeeds.

193. On 21 July 2021 the claimant emailed Carl Melia asking for a chat preceding a formal request for compressed hours. Even though it is clear from the claimant's e-mail that she had read the policy Carl Melia provided a copy of the policy. This reply put the claimant off entirely from pursuing her request for compressed hours.

The Tribunal could not see by providing an employee with a policy that needs to be followed in order to request compressed hours that this could be less favourable treatment because of race. This allegation of direct race discrimination fails. Further the Tribunal determined this innocuous event could not establish unwanted conduct related to race. This allegation of harassment related to race fails.

194. Carl Melia and Mark Kelly attempted to use the claimants pregnancy and maternity leave to try and get rid of her. They decided that the claimant would either go to the HEC or if she stayed in the contract management team a performance management process would be used against her. The claimant says that Karen Hardwick was complicit in these actions.

Despite the respondent's contentions to the contrary, the Tribunal found that Mr. Melia and Mark Kelly did attempt to use the claimant's pregnancy/maternity leave as a means to manoeuvre her out of the contracts management team. The Tribunal found that Mr. Melia and Mr. Kelly had sought advice about the claimant in mid-March 2020 from Mr Nick Stockley because Mr. Kelly believed that the claimant was not doing any work and he formed this view because he was suspicious of the claimant and he wanted her removed from the organisation. Karen Hardwick as a member of the HR team provides advice only. The Tribunal were not satisfied that Karen Hardwick sought to manoeuvre the claimant out of the contracts management team and she was not a decision maker; Karen Hardwick had historically been very supportive of the claimant when the claimant sought to complain about unfavourable treatment from a colleague and in the circumstances on the balance of probabilities the Tribunal rejected Karen Hardwick was complicit in the manoeuvring of the claimant out of the contract management team not complicit. Mr. Melia approached the claimant by text and email in August 2021 (page 595 and 596) for a discussion prior to her return to work from maternity leave. The claimant covertly recorded the conversation During the telephone conversation on 8 September 2021 page 1 to 25 of the transcript bundle. There is no dispute that this is an accurate transcription. During the conversation Mr. Melia raised there was to be a restructure so there was a job opportunity in the HEC working under John Paton. He suggested to the claimant that if she moved to HEC the improvement plan could be removed and she could be part of the bonus scheme again; if the claimant chose to stay in the contract management team she would be subject to the performance improvement plan. Effectively the claimant could either go to the HEC or if she stayed in the contract management team a performance management process would be still live. The Tribunal determined that the real reason for this was to remove the claimant from the contracts management team where she was

not wanted because of her race. This allegation of direct race discrimination succeeds.

195. On 20 August 2021 Carl Melia texted and emailed the claimant while she was on leave to try and trick her into taking a new role before she returned to work.

The Tribunal determined that this allegation was in essence the same as the allegation above. The “trick” referred to in the allegation from the claimant’s evidence was that the new role in HEC was being sold to her prior to her return to work. Carl Melia text the claimant and emailed p.595 and p.596 for a return to work meeting. The claimant was not due to return to work until September. The Tribunal considered that Mr. Melia did wish to remove the claimant from the team and placed her in the HEC. Although this was disputed by the respondent; the Tribunal found compelling the following evidence which contradicted this assertion; the evidence of Mr. Patton who would be managing the claimant did not consider that the role was immediate; the Tribunal determined had the role in HEC been an immediate position on the balance of probabilities Mr. Patton would have been aware of this; there was a delay in giving the claimant her role back following her return to maternity leave; although the respondent contended this gave the claimant time to catch up; this claimant had been conducting the role for a number of years and was experienced; the claimant did not receive the Facebook work back from Rosi Waite on her return to her position; the claimant was effectively threatened that if she did not take the role in the HEC, she would be subject to a performance improvement plan. Taking all this evidence together the Tribunal determined that there was a concerted effort to remove the claimant from HEC so that Rosi Waite the white contractor would continue in the claimant’s role.. The Tribunal determined that the respondent was seeking to sell the role to the claimant prior to her return to work. It was less favourable treatment. The Tribunal found that the real reason was the removal of the claimant from the contract management team because the claimant was black. This allegation of direct race discrimination succeeds.

196. On 8 September 2021 Carl Melia phoned the claimant again and tried to coerce and convince her into taking the opportunity in the HEC. He did not mention the claimant resuming normal duties. On 7 September 2021 the claimant instant messaged Carl Melia on three occasions regarding getting her role back. He responded to say that she should not do anything work related until she had spoken to him.

This allegation is similar to the two allegations above. The claimant messaged Mr. Melia (see page 598); she stated “*when are you arranging the handover of my job back to me from Rosi; or do you want me to just reach out to Rosi myself to take my work back; or I can reach out to the PMS and CM's and let them all know that I'm back*”. Mr. Melia did try and convince the claimant to take a role in the HEC. The claimant covertly recorded the conversation (see transcript of conversation page 1 to 25 of the transcript bundle). The Tribunal was not satisfied that the delay in announcing the claimants return could be explained by Mr. Melia’s evidence that the respondent was allowing the claimant sometime to adjust to being back at work following her maternity leave. The Tribunal was not satisfied by the urgency placed by Mr Melia of offering and the claimant accepting the role in the HEC. The evidence of Mr. Patton who the claimant would be

working for in the HEC was that the new role was far in the future and it needed to be signed off. This contradicted the evidence of Mr. Melia who said that the HEC role required no sign off and no change of budget. There was no job description at the relevant time. The haste to which Mr Melia wished to encourage the claimant to take at that time a speculative role in HEC was not adequately explained. The Tribunal determined the haste in seeking to encourage the claimant to take the HEC role was by reason of removal of the claimant because of her race. This allegation succeeds.

197. On 13 September 2021 the claimant had a call with Carl Melia and asked him to arrange the handover of her role back to her. Carl Melia did not do so instead he reminded the claimant over and over that he was her line manager and could do as he pleased; he mocked the claimant by asking who she was to be telling people what to do; he told the claimant that she wasn't a lawyer and said in a sarcastic tone "I don't reveal where I get my information from either Gemma".

The claimant covertly recorded the telephone call; (see pages 35 to 51 of the transcript bundle). The context of the conversation was the claimant's message to the team about being back at work and her message to Mr. Melia about handing her job back (referred to above) and the response to Mr. Melia's request for the claimant to meet with him and Mr. Paton in respect of an exploratory chat of the job in HEC to which the claimant had replied she was not free at 10 a.m. Mr. Melia had asked why the claimant was not free and she simply said "*I'm just not free.*" The claimant did not explain to Mr Melia why she was not free. In the discussion Mr Melia explained to the claimant as her line manager he had a right to know what the claimant was actually working on and if she was not available why she was not available. He suggested to the claimant by not giving a reason, it came across as quite evasive. The claimant said she was not being rude and had offered another time to meet. The claimant explained in the discussion that she was not free for personal reasons which she did not wish to disclose. Mr. Melia stated that if the claimant had a personal appointment as his line manager he did have a right to know. Mr Melia said (page 37 of the transcript) to forget about the HEC opportunity and the respondent will continue down the pathway of the performance improvement plan. The claimant asked about the handover from Rosi; why the claimant was being paid to sit and do nothing whilst Rosi Waite was being paid to do the claimant's job. Mr. Melia said as a line manager of the department it was his choice. Mr. Melia said that Rosi was doing some SAP work which the claimant stated was her job. Mr. Melia said the handover would take place, to enable the claimant to be back up to speed, by the end of the month. Mr. Melia took issue with the claimant telling the team she was back and taking instructions because he ran the team and the claimant was dictating to him. The claimant disputed this and said *can I have my job back you've all skirted around the issue and blanked me nobody has given me an explicit yes or no*. Mr. Melia said he was organising a hand back of the SAP duties that Rosi had been doing to enable the claimant to do the month end at the end of September. The claimant said she was underutilised and that Rosi was doing her job. Mr. Melia said she was not. The claimant insisted that she was. Mr. Melia said he was happy to hand the SAP work back to the claimant but it comes back to an earlier conversation that the claimant would be part of a performance improvement plan and they would pick up on that

in a meeting. The claimant informed Mr. Melia at page 45, people had told her *there's colour next to your name there's no X you're in green why do I not know you're back* Mr Melia asked who had told the claimant this and she said I don't reveal my sources. He responded he didn't reveal his sources either and where he gets his information from *but let's just say that your communication to me on Friday was considered to be inappropriate*. He described that the claimant was actually disrespectful in telling him she was going to send an e-mail and the tone of it. The claimant stated to Mr. Melia she felt like he wanted to silence her; she did not consider it was rude to tell the team she was back. Mr. Melia said if the claimant was going to make a wider business communication, he should be approving it because he managed the contract team. He said to the claimant "Gemma you're not a lawyer". The claimant responded "*I'm not a lawyer I have a law degree but I'm not a lawyer*" The claimant raised that Rosi was doing the project coordinating for Facebook; the claimant did not understand why they were having a meeting about her telling the team she was back; that she was sat scratching around for work while Rosi was juggling her job and it didn't make sense. Mr. Melia said it was his decision. The claimant described it was her legal right to have her job back from ordinary maternity leave. He described the communication and the attitude of the claimant was rude. The claimant told Mr Melia that he *was not pipping her mate* Mr. Melia asked if that was a threat. The claimant repeated this. Mr. Melia described the claimant as defying his role as a manager. to the team that she was back from maternity leave. The Tribunal determined that the conversation between the claimant and her manager as combative with both being frustrated at the others conduct. The Tribunal did not find that Mr. Melia mocked the claimant; he stated a fact the claimant was not a lawyer; he perceived the claimant to being defiant and in response to the claimant stating that she did not reveal her sources; he responded in the same manner. The tribunal determined that this conversation was difficult but was not less favourable treatment related to the claimants race. The real reason for the treatment that the claimant complains about was a conflict of Mr. Melia seeking to assert his more senior position and management to the team. The allegation of direct race discrimination fails. Furthermore the Tribunal did not determine that the conversation was related to race; both parties gave as good as they got; it was, as explained, combative and the Mr Melia was seeking to assert himself as a manager. The allegation of harassment related to race fails.

198. On 13 September 2021 the claimant established during a telephone call with John Patton that the HEC restructure was untrue and it was just the claimant support role that she had been doing since April 2019 repackaged to something new

The claimant covertly recorded this conversation (see page 54 to 62D of the transcript bundle). The tribunal did not view this as an allegation of race discrimination or harassment related to race, rather the claimant decision of the factual position at this time. In the conversation Mr. Paton stated there had been an expansion in the HEC and that was the reason why he needed to recruit because "*everybody is creaking at the seams*". He described that it would be somebody's job to sit and do the project reviews; produce all the minutes and then work with the project managers to get invoicing cost plans done; purchase orders raised and closing down projects. Mr Patton described looking at two new roles effectively; it was going to be something

different from what Sabina was doing at present and combining the roles. The Tribunal determined that the consideration of the two new roles was at an early stage; it did replicate the work already completed by the claimant in her current position. The Tribunal did not see the conversation as allegations of direct race or harassment related to race. The claimant was simply setting out the factual position. It was not a new role; in effect the claimant was carrying out these functions in her present role. This allegations fails.

199. 13 September 2021 Carl Melia telephoned the claimant asking about her use of her personal e-mail address and her outlook calendar. He insinuated that the use of the claimant's personal e-mail address was a cybersecurity concern and that she had purposely restricted her calendar so that nobody could review it

The claimant covertly recorded this conversation (see pages 66 to 67 of transcript bundle). Mr. Melia recorded the conversation in an email at page 610. Mr Melia was entitled to ask the claimant about the use of her personal e-mail address and the fact that her outlook calendar was blank. The use of a non- work and personal e-mail address could be a cyber security concern and as Mr Melia was the claimant's manager he was entitled to raise this with the claimant. Mr. Melia also raised the fact that the claimant had restricted her calendar view so that nobody could view it. Again, the Tribunal found as the claimant's manager he was entitled to raise his concerns with the claimant. The Tribunal determined that the claimant had purposely restricted her calendar and did not accept the claimant's explanation that this was a mistake or an error and the claimant had purposely done so that nobody could review her calendar. The Tribunal determined that this was not less favourable treatment because of the claimant's race nor was it nor it under wanted conduct related to race. It was an act of a manager raising a genuine concern. The allegation fails.

200. On 15 September 2021 Carl Melia emailed the claimant on two occasions regarding her personal e-mail address and her calendar both emails contained untruths to paint the claimant in a bad light

Mr. Melia emailed the claimant see pages 610 and 611. Mr. Melia referred in his e-mail page 611 to the discussion at 1517 on Monday 13 September 2021 the claimants outlook calendar was showing a hashed out grey area. The claimant stated that she was not aware of this but questioned if it may be an issue with his equipment. Mr. Melia requested that the claimant review the outlook settings and seek assistance if necessary to correct it. He referred in the second e-mail at page 610 that had noted that several of the claimant's recent emails included her personal e-mail address and that she was see sending to work related emails; pointing out that this was a potential cyber security risk and he requested that the claimant ensure all future emails are compliant with cybersecurity. He noted that since 13 September 15.17 discussion further emails from the claimant had continued to include the above reference to personal e-mail account. The Tribunal found that Mr Melia did e-mail on two occasions regarding the claimant's personal e-mail address and her calendar. The Tribunal found that Mr. Melia as a manager was entitled to raise these concerns and further the Tribunal did not find the emails contained untruths. The claimant readily complained if she disagreed with issues and she did not dispute the

contents of either emails at the relevant time There was no less favourable treatment because of race or unwanted conduct related to race. Mr. Melia was raising genuine concerns. This allegation fails.

201. On 22nd September 2021 on a virtual call to an audience of 35 people located throughout Europe Mark Kelly welcomed the claimant back to work by saying "it's great to have diverse people kind of returning to work taking their rights". The claimant felt humiliated and intimidated. The mention of her kind of returning to work as a Freudian slip revealing the respondents intention to prevent her from fully returning to work.

The Tribunal has dealt with this allegation below as an allegation of harassment related to race.

202. On 23 September 2021 there was meant to be a handover of the claimants role back to her from her maternity cover, Rosi. However Rosi did not hand over all of the administrative duties that the claimant had prior to her potential leave. In particular Rosi never handed Facebook administration back to the claimant. Carl Melia and Mark Kelly used the claimants pregnancy and maternity leave to take Facebook administration away from her and give it to Rosi

The Tribunal determined that Carl Melia and Mr. Kelly had determined that on return from the claimant's maternity leave, she would be supporting the HEC. Mr. Melia had tried to persuade the claimant to take a role in HEC prior to returning from maternity leave or had given the option of returning to her old job but facing a performance improvement plan. The Tribunal finds that this is corroborated by Andrew Webb; in his interview at page 761 he stated that he understood from Carl that when Gemma returned, her role was to support HEC. Although Mr. Melia stated in evidence that the delay in handing over the role to the claimant was to give her a settling in period, the Tribunal rejected this in the context of what Mr. Melia has told Mr. Webb and the fact Mr. Melia tried to persuade the claimant to take a role in the HEC and avoid a performance improvement plan. The respondent should have handed the claimant back her role including facebook administration on her return. The Tribunal was unsatisfied by the explanation of Mr. Melia. The claimant had a contractual and statutory right to be returned to her role, the Tribunal determined that the respondent used the claimant's pregnancy and maternity leave to take the face book administration away from the claimant and leave it with Rosi a contractor. The reason for this treatment is that both Mr. Melia and Mr. Kelly wished to remove the claimant from the contracts management team and did so because the claimant was black whilst it retained the white female contractor in the facebook role. The allegation of direct race discrimination succeeds.

203. The claimant's grievance hearing was a sham and her genuine concerns were overlooked and purposely diluted so as not to seem so serious or based on misunderstandings on the claimant's part

Sarah Brindley set out her findings in a letter dated 22 September 2020. She did not uphold the claimant's grievance. She noted that the claimant had been asked to return to the office one day per week whereas her colleagues only needed to return if it was required for business reasons; Ms. Brindley did not find this to be an act of discrimination. She found it was a reasonable request that and claimant attend the office for visibility. The others in the claimant's team were project managers and they were required to work on sites across the UK and they were gradually doing more site visits after the

lockdown periods. They did a different role to the claimant. Project managers travel a lot and are required to be embedded at customer sites whereas the claimant was not. At the time she was asked to come into the office one day per week the business as a whole was encouraging more office attendants the payment had been working from home on an informal arrangement before the lockdowns see page 508 to 511 she suggested that a workplace mediation session between the claimant and her line manager but the claimant did not reply to this suggestion. The claimant did not appeal nor agree to. Tribunal family friendly to be inexperienced. She informed the Tribunal it was the first grievance that she had dealt with. The claimants grievance specifically stated at page 432 is it because I am black; I'm not trusted as I'm black. However at paragraph 9 of Sarah Brindley's witness statement she said the claimant had not specifically said that she felt she was being treated differently because of pregnancy maternity or her race. The Tribunal found that due to Ms. Brindley's lack of experience she failed to consider appropriately whether the claimant's treatment was because of protected characteristic. Further Ms. Brindley informed the Tribunal that she spoke to Mr. Stockley concerning the meeting he had with Mr. Kelly and Mr. Melia following a concern from Mr. Kelly about what the claimant was actually doing. Ms. Brindley failed to take any notes of that discussion see paragraph 12 (e) of Ms. Brindley's witness statement. The Tribunal considered it would have been important to have an accurate note as to what was discussed between Mr. Melia, Mr. Kelly and Nick Stockley. The Tribunal did not consider the grievance investigation a sham but considered it to be poorly investigated by an inexperienced member of staff. The Tribunal concluded that this was nothing whatsoever to do with the claimant's race and did not constitute an act of harassment related to race. This allegation fails.

204. Karen Hardwick was fully aware of Carl Melia and Mark Kelly's unlawful actions above but failed to prevent them and or protect the claimant instead she enabled them

The Tribunal rejected this allegation. Karen Hardwick was strongly opposed to discrimination and she was supportive of the claimant when she was considering complaining about a colleague. Further she encouraged the claimant to make a formal complaint of discrimination about Mr. Melia because the claimant's concerns were serious. The Tribunal does not find on the balance of probabilities that Ms. Hardwick was aware of the alleged discriminatory treatment until the claimant considered raising a grievance and did not find that Ms. Hardwick failed to prevent it or protect the claimant from it. There was no less favourable treatment related to race or any unwanted conduct related to race. This allegation fails.

205. In role reviews on 31 March, 25 April and 20 May 2022 Carl Melia did not facilitate the claimant doing a masters or QS degree or getting training books or professional subscriptions. The claimant compares herself to Jennifer Moore, Chloe Bamford, Lisa Higgins and Harry Smith. The respondent agrees that it did not facilitate the claimant doing a masters or QS degree but says the claimant did not request training books or professional subscriptions.

There was no requirement for the claimant to have a masters or QS qualification for her role. The Tribunal found on the facts that the claimant's job had included the opportunity to qualify as a quantity surveyor. The

claimant had mentioned doing a course but did not mention this to Mr. Melia during these meetings. The claimant had referred to doing a QS qualification. On the balance of probabilities, the Tribunal determined that Mr. Melia had previously told the claimant to look at some courses and let him know the costs and he would have considered whether he could support her with that development. The claimant was asked to present what course she would like to do and how it would fit into her development. The claimant did not present anything to Mr Melia. In respect of the pleaded comparators the Tribunal accepted the evidence of Mr Melia as follows; Jennifer Moore was based in Ireland as a contract administrator. She has not received support from the respondent to do a masters or QS degree. Miss Moore joined the respondent's team in January 2022. Chloe Bamford was an assistant QS in another part of the business and she had already started a part time degree in Lancashire when she joined the respondent. The respondent took on the costs of that she commenced working in Mr. Melia team in February 2023 as a contract manager; unlike the claimant she was not an administrator. Lisa Higgins was based in the respondents finance team namely end user projects commercial team and was not in Mr. Melia team there is no information as to what if any support she received for her education. Harry Smith was an operations manager. He worked at the same level as John Patton in HEC he was not in Mr Milly's team either so that miss Millie had no control over what level of support he received the respondent sponsored him to do an MBA he is not an administrator unlike the claimant. The Tribunal did not find that the claimant was treated less favourably because of her race. The allegation of direct race discrimination fails. Further the Tribunal did not consider there was any unwanted conduct related to race.

206. The claimant was invited to a disciplinary hearing regarding submission of timesheets on 9 June 2022 and given a written warning on 13 June 2022. The claimant compares herself to Andrew Garthwaite this respondent agrees that this happened.

The claimant only compared herself with Mr. Garthwaite. By letter dated 6 June 2022 the claimant was invited to a disciplinary hearing arranged for 9 June 2022 concerning an allegation of serious misconduct which related to the claimant's failure to complete timesheets. Since February 2020 the claimant had been given clear instructions to complete timesheets. She did not comply with this instruction. The respondent was entitled to investigate this issue and in the circumstances that the non-completion of time sheets was an ongoing issue; the claimant was aware of the importance of submitting a timesheet; claimant accepted that she was aware of its importance and that she hadn't complied with the instruction to complete timesheets, The respondent was entitled to give the claimant a first written warning 13 June (see page 1108). Andrew Garthwaite was in a different job to the claimant; he was a senior contract manager and was unable to access the time recording system for many months and it was escalated to the IT team in India to resolve the software vendor had to get involved in that. Eventually Mr. Garthwaite had to use a different system to submit his time recording you have to use the SAP this is the system that everyone now uses for time recording. The Tribunal found Andrew was not an actual comparator pursuant to section 13 of the Equality Act 2010 in that he performed a different role to the claimant; he had not been given a direct

instruction. The claimant's treatment had nothing to do with race. This allegation fails. Furthermore the Tribunal concluded that this unwanted conduct was not related to race.

207. The claimant was dismissed on 15 July 2022 for an alleged disciplinary offence; the respondent agrees that this happened.

Pursuant to the respondent's disciplinary procedure page 199 to 214, the respondent (pursuant to paragraph 12 at page 210) can sum together current active formal warnings therefore *an employee who has a currently active second stage warning may be dismissed for a further offence which without their early history of misconduct would receive only a first stage warning*. The respondent determined by letter dated 19 July 2022 page 1141 to 1142 that the e-mail response by the claimant dated 14 June was inappropriate and offensive and included a colleague in distribution and demonstrated a complete lack of ability to manage yourself or follow procedures or and or guidance from supervisors. During the investigation meeting the claimant was unable to identify the specific points in the e-mail that the claimant referred to as horrible offensive racially discriminative or demonstrated victimisation. In the circumstances the respondent deemed that the e-mail was wholly false and made in bad faith. At the time the claimant had a live first written warning. It was determined that this conduct warranted a final written warning under the summing up together procedure under the disciplinary policy. The respondent determined to dismiss the claimant. On the basis of these findings the Tribunal did not consider that the claimant was discriminated against namely dismissed by reason of race. The respondent determined that having found that the e-mail was false or made in bad faith in the absence of any particulars by the claimant as to what was discrimination by her manager (having circulated the email to a colleague) but a final written warning was the just sanction; this was totted up with the present first written warning so that dismissal was the sanction. The Tribunal found that was the reason for the claimant's dismissal and it was not an act of direct race discrimination or unwanted conduct related to race. This allegation fails.

Harassment related to race

208. The Tribunal deals with allegations here not considered to be direct race discrimination or harassment related to race set out above (in accordance with section 212 of the Equality Act 2010).

209. On 2 April 2020 Carl Melia telephoned the claimant saying that Mark Kelly was asking what she was smoking as the figures she provided in the quarterly reports were incorrect and the claimant was being blamed. It subsequently transpired that the data the claimant was using to populate the report was correct and had been for some time but no apology was made to the claimant.

The Tribunal preferred the evidence of the claimant. The respondent's evidence was inconsistent. The claimant delivered the data from the KPI on the 31 March 2020 to her manager Mr Melia. At 8:01 in the morning Mr Melia contacted the claimant to suggest that Mark Kelly had asked what she was smoking. During his investigation interview, Mr Kelly (at page 809) suggested there were a billion chain of orders against figures and accepted he may have said to Carl Melia they'll ask if I'm smoking crack. Mr. Kelly did not imagine that Mr. Melia would say that to the claimant. Mr Melia stated

that Mr. Kelly (page 850) made no reference to smoking at all. This is inconsistent with the evidence given by Mr. Kelly during the interviews. Mr. Melia said he would probably have said “away with the fairies”. At the relevant time the claimant had dreadlocks. Mr. Kelly stated at page 809 “*I certainly in no way meant to make some remark about her being a rastafarian smoking something or whatever.*” The tribunal did not accept this. The Tribunal determined that Mr. Kelly did say what was the claimant smoking and Mr. Melia repeated this to the claimant. It was a comment based on a stereotypical view of a black person with dreadlocks smoking drugs. It was unwanted conduct which violated the dignity of the claimant and it was related on race. The claimant was offended. A reasonable person would be offended. This allegation succeeds.

210. On 1 April 2020 Carl Melia sent the claimant a text message at 1746 PM. This was outside of the claimant’s contractual hours. She was requested to join the call that was in progress regarding cost alignment. The claimant felt she had no choice but to stop making dinner for the family and join the call. The claimant was able to work out what had gone wrong with Maddon Fernando. The claimant and Maddon Fernando were being blamed for errors in projects but the errors had in fact arisen because of financial postings by Andrew Webb the financial controller and cost changes made by Avania Hawkings.

The claimant’s working hours at the respondent were 8.30 am to 4.45pm. Mr. Melia telephoned her mobile at 17.46 (page 349). Mr. Melia’s evidence to the Tribunal was that the claimant worked all sorts of hours and she was on line at the time that is why he contacted her. The Tribunal did not accept this explanation and rejected Mr. Melia’s evidence. The Tribunal determined had the claimant been on line at the time Mr. Melia could have skyped called the claimant; he did not because the claimant was not on line. In any event the matter was non-urgent in any event and Mr. Melia could not give an adequate explanation as to why this issue could not wait until the next day. The identified errors did not have anything to do with the claimant. Mr. Melia then sought to delete the meeting from the claimant’s Microsoft diary. Mr. Melia stated in evidence that the discussion was not necessary so he deleted it from the diary (see page 350). The Tribunal determined that this was an inadequate explanation. The Tribunal reached the conclusion that Mr. Melia deleted the meeting because he contacted the claimant outside of her working hours. Further Mr. Melia was seeking to blame the claimant and Mr. Maddon (also a black employee) for errors but they were not to blame. This was unjustified. The Tribunal found both the contact outside of business hours and seeking to blame the claimant unjustifiably for errors amounts to unwanted conduct. The Tribunal found that this conduct was unwanted. The Tribunal did not find that contacting the claimant outside business hours was related to race; it was more related to the arrogance of the claimant’s manager that felt that the claimant as a junior employee had to be available at short notice including outside business hours. However the Tribunal did find to seek to blame the claimant unjustifiably about errors was humiliating to the claimant and the Tribunal found that was related to race; an assumption that black employees had made errors. Such conduct violated the claimant’s dignity and she so considered reasonably. This allegation succeeds.

211. On 3 July 2020 Carl Melia emailed the claimant and copied in the entire contract management team. He asked if the claimant had confirmed with her team members that they were OK with her being off on annual leave at such short notice. Another member of the team deemed the e-mail so degrading and humiliating to the claimant that they reported Carl Melia on the red line
The claimant made a request on 3 July 2020 to have annual leave at short notice next week (see page 416). Mr. Melia responded to the request by copying in four team members (page 417) stating *“Can you please detail what you have to handover if you are on leave next week and what coverage will have to be put in place during this time for those activities that shall still be required. Also have you confirmed with the CM team member who you support eg Peter Birch for Facebook, and Chris Davies for pre-sales that they are okay with you being off on annual leave at such short notice”*. The unchallenged evidence is that Chris Davies reported Mr. Melia to the whistleblowing line. The Tribunal determined that this was unwanted conduct and created a humiliating environment for the claimant because it was sent to all her team colleagues. The Tribunal determined that this treatment was related to race because in the context that the respondent had determined to remove the claimant from the organisation and Mr. Melia did not trust the claimant as a black employee. This allegation succeeds.

212. On 3 July 2020 the claimant emailed Carl Melia and asked for a considerably longer one to one so that she could discuss her career development. A meeting was arranged for 10 July 2020 but rather than discuss the claimant’s career development the meeting changed into a performance management meeting. The version of events that Carl Melia provided in writing after the meeting included lies.
On 3 July 2020 (page 418) the claimant did make a request for a significantly longer duration so that they could discuss her career development and her evolution from a contracts administrator to the trainee quantity surveyor that *“I’m supposed to be as per my job description”*. The claimant also wanted to discuss her workload and goal setting. Mr. Melia stated he would respond in due course (p.418A). Mr. Melia arranged a meeting on 10 July 2020 which the claimant left after 12 minutes. Mr. Melia sent an email setting out his version of events following the meeting (see pages 430 and 431). Mr. Melia informed the claimant in the meeting that he wished to place her on a Performance Improvement Plan. Mr. Melia accepted in the grievance interview evidence he should have alerted the claimant to the fact that he wished to discuss her underperformance prior to the meeting. He also said there is an informal process. He also said he was not seeking to impose a performance plan. The clear indication in the letter sent to the claimant after this meeting is that Mr. Melia was seeking to impose an improvement plan on the claimant. The Tribunal found that Mr. Melia’s evidence was contradictory and hence unreliable. He failed to tell the claimant the purpose of the meeting without reason. He had not as set out in his email offered the claimant compassionate leave; that was untrue; in fact Mr. Melia had said the claimant could book 2.5 days per week to the NP11 waiting non chargeable time. The Tribunal determined that Mr. Melia’s conduct at the meeting and his email containing an untruth following amounted to unwanted conduct which created an intimidating, hostile and degrading environment for the claimant and reasonably so. The Tribunal

determined that the harassment was related to the claimant's race by reason of the fact that the respondent had determined to remove the claimant from the organisation. This allegation succeeds.

213. On 22nd September 2021 on a virtual call to an audience of 35 people located throughout Europe Mark Kelly welcomed the claimant back to work by saying "it's great to have diverse people kind of returning to work taking their rights". The claimant felt humiliated and intimidated. The mention of her kind of returning to work as a Freudian slip revealing the respondents intention to prevent her from fully returning to work.

The Tribunal dealt with this allegation as an allegation of harassment related to race. Although the tribunal did not have the benefit of hearing the direct evidence from Mark Kelly (he is no longer employed by the respondent) he was interviewed as part of the claimant's grievance. The Tribunal accepted the claimant's evidence and determined that it was unwanted conduct to state "it's great to have diverse people kind of returning to work taking their rights". At the time this was said in front of a group of people on line as the claimant joined the call, the claimant was returning from maternity leave and was a black female. The Tribunal considered that Mark Kelly made this reference in front of an audience of 35 people and the reference to diverse was a direct reference to claimant's race. The Tribunal found that it was a reference related to the claimants race and it created both subjectively and reasonably a humiliating environment for the claimant. The Tribunal is mindful of the fact that the words of section 26 of the Equality Act 2010 must be recognised as serious. The comment here was unnecessary and gratuitous and the claimant reasonably and objectively felt humiliated by it. This allegation of harassment related to race succeeds.

Victimisation

214. The claimant relies upon three "protected acts"; the respondent concedes the first two pleaded acts are acts of victimisation but disputes the third stating that it was not made in good faith

- (a) Submitting a grievance on 17 September 2021. The respondent accepts that the grievance raised a claim of race discrimination and it was a protected act;

The Tribunal finds that this was a protected act within the meaning of section 27 of the Equality Act 2010.

- (b) Her first tribunal claim presented on 13 February 2022; the respondent accepts this was a protected act;

The Tribunal finds that this was a protected act within the meaning of section 27 of the Equality Act 2010.

- (c) An e-mail to her manager, Carl Melia, on 10 June in which the claimant asked Mr. Melia to stop treating her differently because she was black the respondent denies that this was a protected act on the basis that the allegation was in bad faith.

The Tribunal has found that the claimant was subject to direct race discrimination and harassment related to race. However, the claimant's position as regards this email has been inconsistent. In the course of the interview with Ms. Whittington at the disciplinary hearing concerning the email, the claimant was unable to identify specifically what was the victimisation relied upon contained in the email from Mr. Melia. In fact,

the claimant's evidence at the disciplinary hearing is that she sent it by mistake; she had sent it unedited. The claimant's case before this Tribunal is different and she asserts her email was an act of victimisation. The inconsistency in the claimant's evidence leads it to conclude that the assertion made by the claimant that the email was victimisation was made in bad faith. Mrs. Whittington in her evidence had not formed a view whether the claimant genuinely believed she was discriminated against by Mr. Melia generally; her focus was the actual email. Mr. Melia's evidence to the Tribunal is that the claimant genuinely believed generally she was being treated less favourably because of her race. The Tribunal accepted that the claimant genuinely believed that she was being treated less favourably by reason of her race but in respect of this email the claimant's evidence was wholly inconsistent. The Tribunal reached the conclusion there was bad faith on the part of the claimant. In the circumstances this was not a protected act within the meaning of section 27 (3) of the Equality Act.

Detrimental Treatment

- a. The claimant relies upon the following treatment as detrimental treatment as a result of the protected acts
- (a) Mark Kelly intimidated and humiliated the claimant on 22 September 2021 on a virtual call to an audience of 35 people; he referred to the claimant as a diverse person taking her rights. The claimant understood he was referring to her being black and having had a baby he also referred to the claimant kind of returning to work rather than fully returning to work.
- The Tribunal was not satisfied that Mr. Kelly was aware of the claimant's grievance submitted on 17 September 2021. Further the Tribunal was not satisfied Mr. Kelly said this because the claimant had submitted a grievance (see **Greater Manchester Police v Bailey 2017 EWCA Civ 425**; it is trite law that the burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or done a protected act). This allegation fails.
- (b) The claimant was never given back her Facebook administration after returning from maternity leave on 6 September 2021. The handover was supposed to happen on 23 September 2021 the respondent denies this. In her second claim
- Prior to taking maternity leave the claimant was administering Facebook. On her return from attention leave on 6 September 2021 the claimant was not headed back Facebook. The Facebook administration remained with the white contractor Rosi. There was no adequate explanation as to why the claimant pursuant to her contract and statutory rights was not placed in the same role on her return from maternity leave that she was doing. The Tribunal rejected the respondent's suggestion that it sought to give some time to the claimant to settle back into her role following her maternity leave; the fact is the claimant's role of Facebook was never returned to her. In the circumstances, the Tribunal determined that the respondent treated the claimant less favourably because she had done a protected act. The allegation of victimisation succeeds.

- (c) The claimant did not have the opportunity to agree goals with her manager which should have been done by February 2022. The respondent agrees that there was a delay in goal setting for the claimant. The respondent's evidence about goal setting was inconsistent and contradictory. Mr. Patton stated that a manager set the goals with an employee. Mr. Melia suggested an employee sets goals. The Tribunal determined Mr. Patton's evidence was more credible than Mr. Melia who had failed to set goals for the claimant. In the absence of an adequate explanation for setting goals for the claimant, the Tribunal determined that the non-setting of goals for the claimant was a result of the claimant raising /doing a protected act. This allegation succeeds.
- (d) The claimant was investigated for fraud after submitting expenses in the normal way and she was subjected to a face to face meeting about this on 23 March 2022. Other colleagues who had their expenses claims questioned were not subjected to such an investigation. The respondent agrees that the claimant was investigated over an expenses claim and for apparently making a covert recording
The claimant was investigated after submitting an expense form a train journey and taxi for a date immediately prior to the date when the claimant was meant to be in Birmingham. This anomaly did require an explanation from the claimant. The claimant was not disciplined but the respondent was entitled to investigate the issue with the claimant. This allegation of victimisation fails.
- (e) In role reviews on 31 March, 25 April and 25 May 2022 Carl Melia tried to take aspects of her role away from the claimant. He also gave the claimant a task to do which was time consuming and pointless because it was automated i.e. PO-P3. The respondent does not agree with this. The claimant did not identify in evidence the roles removed but simply referred the Tribunal to the transcript at page 123. In the circumstances that aspect of the allegation was not evidenced. The Tribunal has already considered above the allegation concerning the time consuming and pointless exercise. It was not put to Mr. Melia that he did this because the claimant had raised a grievance or a complaint. This allegation fails.
- (f) In the above role reviews, CM did not facilitate the claimant doing a masters or QS degree or getting training books or professional subscriptions
The Tribunal has dealt with this allegation above. The claimant mentioned doing a course before but not in these meetings in 2022. The claimant had referred to a QS qualification. Carl Melia previously told the claimant to look at some courses and tell him the costs so he could consider. Although a QS degree or masters is not a requirement for an administrative role there had been a discussion as part of the claimant's development that a course could be developed. The claimant failed to present any course to Mr. Melia. The Tribunal did not consider that the factual allegation was made out and the allegation fails.
- (f) On 13 May 2022 Carl Melia retrospectively approved a day's holiday for the claimant on 3 May 2022 because he had not approved it in time; the claimant had worked that day but CM insisted that it was to be viewed as a day's holiday. The respondent accepts that this happened.

The claimant sought to book leave at short notice namely sought the Monday off on the Friday before. Mr. Melia did approve it and did not see any evidence of any work activity from the claimant on the day. Mr. Melia was entitled to approve the leave having seen no activity on that date. This allegation fails.

- (g) On 27 May 2022 Carl Melia spoke to the claimant in a sarcastic and humiliating tone about the Tender Tracker Excel spreadsheet in front of Sarah McGill. The respondent does not accept this happened

The claimant covertly recorded this conversation (see the transcript bundle page 228-240). The Tribunal found that the claimant was obstructive when Mr. Melia spoke to her about the tender tracker. The claimant wanted to use the spreadsheet she had which was some years old. As a manager of the team, Mr. Melia decided to introduce a new process he viewed as an improvement to the pre sales-process and decided an updated new spreadsheet was required. The new spreadsheet included some new headings. The claimant was resistant to this change and was not being supportive. Eventually, Mr. Melia just told the claimant to do what she wanted. The discussion has to be viewed in context and the claimant was being obstructive; the Tribunal were unsurprised in the context of the claimant's resistance that Mr. Melia told her to do what she wanted. This allegation fails.

- (h) The claimant was invited to a disciplinary hearing regarding submission of timesheets on 9 June 2022 and given a written warning on 13 June 2022

The claimant was late even on her own case of submitting timesheets. The claimant along with the team were reminded of the importance of the completion of timesheets in February 2020. The claimant had been given several chances to get her timesheets up to date; she failed to do so. By this stage the issue of non-completion of timesheets was recurrent and long standing. In the circumstances the respondent was entitled to invite the claimant to a disciplinary hearing. This allegation fails.

- (i) On 10 June 2022 Carl Melia copied in Sarah McGill on an e-mail which the claimant found humiliating degrading. The respondent does not accept that the e-mail was humiliating or degrading

On 10 June 2022 (page 1083) Mr. Melia sent to the claimant (copying in Sarah McGill); it was short and curt concerning the fact that the claimant has delayed in setting a meeting up but the Tribunal finds that it could not reasonably be considered to be humiliating or degrading (even when a third party was copied in). This was a result of his frustration of the claimant for failing to arrange a meeting in good time. This allegation fails.

- (j) On 10 June 2022 Carl Melia sent the claimant an e-mail inviting her to an informal counselling session relating to booking meetings which took place the following week. The respondent denies this.

Mr. Melia did send the claimant an invite to a meeting for 15 June 2022 (page 1099); the subject is "Informal counselling session". This meeting was concerned with the failure of the claimant to put a date in the diary for a meeting. The Tribunal determined that was the reason for the treatment and it was nothing to do with doing a protected act. The allegation fails.

- (k) The claimant was dismissed on 15 July 2022 for an alleged disciplinary offence

The claimant was dismissed on 15 July 2022 pursuant to the totting up provisions under the disciplinary policy. The dismissal letter is set out at page 1141-2. The claimant had previously received a first written warning for a failure to complete time sheets. She received a final written warning for making an allegation of victimisation in bad faith. The totting up process under the disciplinary process led to the claimant's dismissal. The email (page 1105) concerned the claimant's failure to set up a meeting in the diary. Due to the fact that the email of Mr. Melia had been copied in Sarah McGill, the claimant's response was copied into Sarah McGill. At the disciplinary hearing the claimant stated she had not meant to send it but made no attempt to recall it and she was unable to identify specifically what aspects of her manager's email was victimisation. The claimant's tone is aggressive and defiant in response to her manager's dissatisfaction that the claimant had failed to arrange the meeting. The claimant had not in fact arranged the meeting. In the circumstances the respondent was entitled to find that the claimant had made an allegation of victimisation about her managers' email in bad faith. This allegation fails.

215. Pregnancy and Maternity discrimination Equality Act 2010 section 18.

The respondent relies upon the fact that the acts complained of took place outside the protected period so the claims must fail. However, this ignored the provisions of 18 (5) of the Equality Act 2010 which states that if the treatment of a woman is an implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period, even if the implementation is not until after the end of that period. The protected period is defined under section 18 (6) of the Act as (relevant here) when the pregnancy begins and ends (a) if she has the right to ordinary and additional maternity leave at the end of the additional maternity leave or if earlier when she returns to work after the pregnancy.

The unfavourable treatment as alleged is set out below

- (a) Upon her return from maternity leave on 6 September 2021 the claimant was not allowed to return to the same job that she was doing previously. The claimant asked Carl Melia on numerous occasions when she could have her job back but to no avail

Mr. Melia contacted the claimant whilst she was on maternity leave. He emailed the claimant for a discussion about her return to work. In the course of his conversation with the claimant on 8 September 2021 he tried to persuade the claimant to take a new role in the HEC and if she did so she would not face a performance improvement plan. If she remained in the contract management team she would face a performance improvement plan. The claimant did raise with Mr. Melia on a number of occasions when she was getting her job back; she was not given her job back; the white contract worker Rosi retained the Facebook work. The Tribunal rejected the respondent's evidence that it was allowing the claimant sometime to get used to coming back into work before giving her role back. Further, the Tribunal took into account the interview of Andrew Webb who stated that according to Mr. Melia the claimant was to go to the HEC on her return from maternity leave. The Tribunal determined that the decision was made by Mr. Melia that the

claimant would go into the role in HEC and he decided this at the time of the claimant's maternity leave, during the protected period. Mr. Melia took the opportunity of the claimant's maternity leave to put this plan into place. The Tribunal concluded the claimant was treated unfavourably by reason of her pregnancy. This allegation succeeds.

- (b) The claimant made Mark Kelly and Karen Hardwick aware that she had requested from Carl Melia her job back from Rosi Waite who was her maternity cover. Mark Kelly replied advising about his awareness of changes and opportunities. Karen Hardwick never replied

In her evidence the claimant clarified her allegation was directed to the fact that Karen Hardwick did not reply as an act of discrimination. In the circumstances that the e-mail was addressed to both Mark Kelly and Karen Hardwick, the Tribunal accepted Ms. Hardwick's evidence and determined it was reasonable for Mr. Kelly to reply and there was no requirement on Karen Hardwick to respond. This allegation fails.

- (c) The claimant's pregnancy and maternity leave were used as an opportunity to remove her from the contract management team and to give her entire job and all the work associated with it to Rosi Waite. This was to pave the way for Rosi Waite to go from a subcontractor to an employee

The Tribunal found the discussion between the claimant and Mr Melia which Mr Melia had sought to set up before the claimant returned from maternity leave had the intention to remove the claimant from her role in the contract's management team prior to her return from maternity leave namely during the protected period. The Tribunal has already found that Mr. Melia told the claimant he preferred Rosi. Mr. Melia contacted the claimant whilst on maternity leave and tried to convince her to take a role in the HEC. The coercion to take this position included that the claimant would no longer be subject to a performance improvement plan. There was an inexplicable delay on the claimant's return to work of informing the team the claimant had returned to work and her work was not handed back to her (the Tribunal rejected the suggestion there should be a bedding in period for the claimant; she was experienced in her role). The respondent has denied this. The respondent does not run the case that Rosi Waite was a more competent individual than the claimant; it's case is that the HEC role was a good opportunity for the claimant. The creation of the HEC role it would appear from Mr Patton's evidence was at a very early stage. Rosi Waite retained the Facebook work which formed part of the claimant's duties prior to her maternity leave. Rosi Waite did not do the claimant's role she was simply covering part of it whilst the claimant was on maternity leave The claimant continued to work in her role until she was dismissed in June 2022. Rosi Waite still works for the business as a contractor working on the Facebook account. She works 2 to 3 days a week She also supports the digital energy business. The Tribunal determined that the claimant was treated unfavourably namely there was an attempt to remove her from the contracts management team because of her pregnancy and this decision was taken whilst the claimant was on maternity leave. This allegation succeeds.

(d) On 8 September 2021 Carl Melia phoned the claimant and tried to coerce and convince her into taking the opportunity in the HEC. He did not mention the claimant resuming normal duties

The Tribunal has dealt with this discussion above. Although this took place on 8 September 2021 (the claimant having returned to work on 6 September) the Tribunal determined that the respondent had determined to coerce the claimant to take the opportunity in HEC in August 2022 whilst the claimant was on maternity leave. There was minimal conversation about the claimant returning to her normal duties save that if she did so she would be subject to a performance improvement plan. The Tribunal determined that the claimant was subject to unfavourable treatment because of her pregnancy. This allegation succeeds.

(e) Carl Melia instead outlined the positives of the claimant taking on the role in the HEC including permanently working from home reporting to John Patton and her performance review of 2020 would be wiped and forgotten about. Carl Melia also emphasised the negatives of the claimant staying in her role in the contract management team which would include still having to report to him and having to undergo a performance improvement plan

The Tribunal determined that this allegation was made out on the evidence. Although the discussion took place on 8 September 2021, the respondent had determined to coerce the claimant into the role of the HEC during her maternity leave namely during the protected period. The claimant was subject to unfavourable treatment because of her pregnancy. This allegation succeeds.

(d) On 13 September 2021 the claimant established during the telephone call with John Patton that the HEC restructure was untrue and it was just the claimant's support role that she had been doing since April 2019 read packaged as something new

The Tribunal from the evidence that this allegation was about the claimant being misled by Mr Melia; namely there was no restructure; the role in HEC was the same as she'd been doing before but packaged as something new and the role was not immediate. On 13 September 2021 the claimant did have a conversation with Mr Patton. There was no express reference to HEC restructure but reference to an expansion due to workload. The position that Mr Patton discussed was not different from the support role that the claimant had been doing since 2019. Mr Melia had packaged this as something new; it was not. The claimant became aware that the HEC role was not something new on 13 September 2021. On 8 September 2021 Mr. Melia had given the impression to the claimant that the position was new; the Tribunal determined that Mr Melia decided to inform the claimant but it was a new position during her period of maternity leave namely during the protected period. To misinform the claimant in this way was unfavourable treatment and it was related to her pregnancy because the claimant's maternity leave gave Mr Melia an opportunity to attempt to remove the claimant from the contract management team. This allegation succeeds.

(e) On 10 September 2021 the claimant instant messaged Carl Melia on three occasions regarding getting her role back; He responded to say that she should not do anything work related until she had spoken to him
Although this act takes place outside of the protected period, the Tribunal determined that Mr. Melia had decided to coerce the claimant into the

HEC role and coerce her away from her old role during her maternity leave; namely during the protected period. Mr. Melia responded to the claimant that she should not do anything work related until she spoke to him because he was intent on the claimant being removed from the contract management team. It was related to her pregnancy because the claimant's maternity leave gave Mr. Melia the opportunity to attempt to remove the claimant from the contract management team. This allegation succeeds.

- (f) Following the claimant's return from maternity leave Carl Melia informed the team to continue as if the claimant was still absent and as a result her colleagues did not want to get into trouble by giving her work to do therefore following her return the claimant was not contacted with the usual frequency by the usual people

The Tribunal found this allegation established. Mr. Melia did inform team members not to contact the claimant. The Tribunal rejects that this was to provide the claimant a bedding in period on her return to maternity leave. Although this act takes place outside of the protected period, the Tribunal determined that Mr. Melia had decided to coerce the claimant into the HEC role and coerce her away from her old role during her maternity leave; namely during the protected period. Mr. Melia was intent on the claimant being removed from the contract management team. It was related to her pregnancy because the claimant's maternity leave gave Mr. Melia the opportunity to attempt to remove the claimant from the contract management team. This allegation succeeds.

- (g) 23 September 2021 there was meant to be a handover of the claimants role back to her from her maternity cover, Rosi Waite. However Rosi Waite did not hand over all of the administrative duties the claimant had prior to her maternity leave in particular Rosi never handed back the Facebook administration to the claimant. Carl Melia and Mark Kelly used the claimant's pregnancy and maternity leave to take Facebook administration away from her and give it to Rosi

The Tribunal found this allegation established. The Facebook administration was one of the claimant's tasks prior to maternity leave. It should have been handed back to her when she returned from maternity leave from her maternity cover, Rosi Waite, but it was not. The Tribunal rejects that this was to provide the claimant a bedding in period on her return to maternity leave. Although this act takes place outside of the protected period, the Tribunal determined that Mr. Melia had decided to coerce the claimant into the HEC role and coerce her away from her old role during her maternity leave; namely during the protected period. Mr. Melia was intent on the claimant being removed from the contract management team. It was related to her pregnancy because the claimant's maternity leave gave Mr. Melia the opportunity to attempt to remove the claimant from the contract management team. This allegation succeeds.

- (h) Karen Hardwick was fully aware of Carl Melia and Mark Kelly's unlawful actions but failed to prevent them and instead enable them.

The Tribunal found that Ms. Hardwick was supportive of the claimant and encouraged the claimant to formally complain about her concerns. The Tribunal was not satisfied on the balance of probabilities that Ms

Hardwick was aware of the actions of Mr. Melia and Mr. Kelly or that she enabled them. This allegation fails.

Time

222. The respondent submitted that much of the claimant's case has been brought outside the statutory time limits and that it would not be just and equitable to extend time taking into account that the claimant is an intelligent person with a law degree. Furthermore that due to the passage of time Ms. Brindley could not recall some evidence and Mr. Kelly is no longer employed. Ms. Brindley had investigated the claimant's grievance and had documentary material available to her. The allegations against Mr. Kelly were also subject to investigation and there was documentary material available.

223. The Tribunal rejected the respondent's submission on time. In the case of **Bahous v Pizza Express Restaurant Limited UKEAT/0029/11** it was stated that the balance of prejudice was plainly a material factor. "We prefer not to treat the merits as a separate consideration but as part of the prejudice balancing exercise. It is a significant factor because on the one hand the claimant has lost not simply a speculative claim but a good claim on the merits. Conversely the respondent has suffered no prejudice in conducting its defence to the claim. In these circumstances the balance of prejudice is all one way. It impacts solely against the claimant's interest".

224. In the circumstances the Tribunal determined it would be just and equitable to extend time for any out of time meritorious complaints. The respondent was able to defend the claims. In respect of the fact that Mr. Kelly is no longer employed by the respondent, this did not cause the respondent any real prejudice. A grievance investigation had taken place and he was interviewed; his statement is recorded.

225. There will be a remedy hearing to assess compensation.

Signed by: Employment Judge Wedderspoon

Signed on: 21 July 2024

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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