



EMPLOYMENT TRIBUNALS

Claimant: Mr G Laffy

Respondent: (1) WKCIC Group T/A Capital City College Group
(2) Ms Odu

Heard at: Watford Employment Tribunal (by video)

On: 7-14 June 2024

Before: Employment Judge Annand
Mr Bury
Mr Scott

Representation

Claimant: Mr Laffy, in person
Respondent: Mr Perry, Counsel (for R1 and R2)

RESERVED JUDGMENT

1. The Claimant's claim for constructive unfair dismissal is well founded and succeeds.
2. The Claimant's claims for harassment related to sex, race and age are not well founded and are dismissed.
3. The Claimant's claims for direct sex, race and age discrimination are not well founded and are dismissed.
4. The Claimant's claim for victimisation is not well founded and is dismissed
5. The Claimant's claim for holiday pay is not well founded and is dismissed.

REASONS

Introduction

1. The final hearing in this case was originally listed for 7 days to start on 6 June 2024. Unfortunately, there was not a judge available to start the case on 6 June 2024, and so the case started on 7 June 2024 and the listing was reduced to 6 days. The Tribunal were able to have a reading morning, hear the evidence and submissions by 13 June 2024, and the Tribunal deliberated on 14 June 2024.
2. During the hearing, the Tribunal were provided with eight witness statements. On the Claimant's side, we received witness statements from the Claimant, Mr Bull and Ms Blythe. For the Respondent, we were provided with witness statements from Ms Odu, Ms Broderick, Ms Kalirai, Mr Mitchell, and later in the hearing from Ms Boi. We heard oral evidence from all of these witnesses, except for Mr Bull and Ms Blythe, who did not attend the hearing. We were provided with a bundle of documents which ran to 360 pages, some additional emails which the Claimant wished to be included and which the Respondent did not object to the Tribunal seeing, and some CCTV footage. During the course of the hearing, we were also provided with some additional emails from the First Respondent.
3. I start by providing an overview of the case. The Claimant's claim is about the breakdown in his relationship with a colleague, Ms Odu (the Second Respondent), and his concerns about the way in which his employer (the First Respondent) dealt with the issues that he raised with them about her conduct. The situation deteriorated over a number of months. The Claimant's case was that he was subjected to a campaign of harassment by Ms Odu and that the harassment was related to his sex, race or age. In July 2022, Ms Odu alleged that the Claimant had made a highly offensive racist and sexist comment to her. The Claimant strongly denied the allegation. In September 2022, both the Claimant and Ms Odu were given a standards letter. Shortly thereafter, the Claimant went off work on sick leave. On 14 September 2022, the Claimant submitted a grievance. There was then a lengthy delay while the grievance was investigated, and on 17 February 2023, the Claimant resigned before he had been provided with a grievance outcome.
4. The Claimant contacted Acas for early conciliation purposes regarding the Second Respondent on 1 March 2023 and a certificate was issued on 3 March 2023. The Claimant contacted Acas for early conciliation purposes regarding the First Respondent on 5 April 2023 and a certificate was issued on 11 April 2023. On 12 April 2023, the Claimant submitted a Claim Form, in which he brought claims against the First and Second Respondents. A preliminary hearing was held by Employment Judge Caiden on 11 October 2023 and an Agreed List of Issues was set out in the Case Management Order.

The Issues to be determined

5. The Issues which the Tribunal were required to consider were as follows:

Protected characteristics

1. *The Claimant relies upon the following protected characteristics:*
 - a) *Race, and for the purposes of the claim he defines his race as "White" and accordingly any comparator is non-White;*
 - b) *Sex, namely male and accordingly any comparator is female;*
 - c) *Age, and for the purposes of this claim it is defined as the over 60s age group.*

Time Limits

2. *Given the date the claim form was presented and the dates of early conciliation (5-11 April 2023 as against the First Respondent and 1-3 March 2023 as against the Second Respondent), any complaint about something that happened before*
 - a) *2 December 2022 may not have been brought in time in relation to the complaints against the Second Respondent and*
 - b) *6 January 2023 may not have been brought in time in relation to the complaints against the First Respondent.*
3. *Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*
 - a) *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?*
 - b) *If not, was there conduct extending over a period?*
 - c) *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*
 - d) *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
Why were the complaints not made to the Tribunal in time?*
4. *It is admitted that all claims under the Employment Rights Act 1996, at present only constructive unfair dismissal, are within time.*

Harassment related to race/sex/age (Equality Act 2010 section 26)

5. *Did the Second Respondent, for which the First Respondent accepts it would be liable for her actions, do the do the following things:*
 - a) ***Allegation 1:*** *On 21 October 2021, shout in the Claimant's face, spraying spit, when locked in lift*
 - b) ***Allegation 2:*** *On 21 October 2021, alleged falsely to Ms Tserendorj that the Claimant "did not care" that a student had gone missing;*

- c) **Allegation 3:** On 30 November 2021, saying words to the effect that "who does he think he is", "he is not better than us", "why should we do what he says", in close proximity to a student with special needs, which led the student to say to the Claimant that he "owed Zainab an apology";
- d) **Allegation 4:** On 30 November 2021, refusing to explain to the Claimant what she had said near the student with special needs that led the student to say he "owed Zainab an apology";
- e) **Allegation 5:** On 30 November 2021, whilst the Claimant was trying to speak to her kissed her teeth and walk away;
- f) **Allegation 6:** On 13 December 2021, drove her car towards the Claimant at speed within the college ground;
- g) **Allegation 7:** On 5 January 2022, being rude and ignoring the Claimant in front of a colleague;
- h) **Allegation 8:** On 25 January 2022, refuse to attend a reconciliation meeting with the Claimant;
- i) **Allegation 9:** On 9 February 2022, whispered "'sadistic bastard" when passing the Claimant outside classroom G.14 in the student zone;
- j) **Allegation 10:** On 9 February 2022, refused to explain what she meant by the "sadistic comment" when challenged by the Claimant, and instead smirking and walking way;
- k) **Allegation 11:** On 28 June 2022, making a gun sign with her fingers when looking at the Claimant;
- l) **Allegation 12:** On 28 June 2022, whispering "sadist" as she passed the Claimant in the corridor between The Mary Rimington Café and classroom G.10.
- m) **Allegation 13:** On 2 September 2022, alleged falsely to the First Respondent that the Claimant had called her a "black cunt";
- n) **Allegation 14:** Between 2 September 2022-6 September 2022, failing to further details on the allegation that the Claimant called her a "black cunt";
- o) **Allegation 15:** On 6 September 2022, failing to formally withdraw the allegation that the Claimant called her a "black cunt" despite no longer

wishing to pursue it and further refusing to mediate with the Claimant following this.

6. *If so, was that unwanted conduct?*
7. *Did it relate to the Claimant's race (White), sex (male) and/or age (over 60s)?*
8. *Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?*
9. *If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.*

Victimisation (Equality Act 2010 section 27)

10. *The protected acts relied upon is the formal grievance made on 14 September 2022 to Amanda Cowley. The Respondents accept that this constitutes a protected act.*
11. *Did the respondent do the following things:*
 - a) *From 14 September 2022 onwards, ignored or failed to engage with the Claimant's request for evidence to support the "black cunt" allegation made by the Second Respondent on or around 2 September 2022;*
 - b) *From 14 September 2022 onwards, did not investigate the "black cunt" allegation made by the Second Respondent on or around 2 September 2022 and/or did not provide a formal outcome of any such investigation;*
 - c) *From 14 September 2022 onwards, failed to taken any or any reasonable disciplinary action against the Second Respondent.*

12. *By doing so, did it subject the claimant to detriment?*

13. *If so, was it because the claimant did a protected act?*

14. *Was it because the respondent believed the claimant had done, or might do, a protected act?*

Direct race, sex, age discrimination (Equality Act 2010 section 13)

15. *Did the respondent do the following things:*
 - a) *Disregard or fail to reasonably act upon the complaints made about the Second Respondent's conduct on 21 October 2021;*

- b) *Ignore or fail to engage with the Claimant's request for evidence to support the allegation made by Ms. Odu on or around 2 September 2022 that the Claimant called her a "black cunt";*
- c) *Elect not to investigate or to adjudicate upon the allegation made by Ms Odu on or around 2 September that the Claimant called her a "black cunt";*
- d) *Choose not to take, or fail to take any or any reasonable disciplinary action against Ms Odu.*

16. *Was that less favourable treatment? The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The claimant says they were treated worse than Second Respondent (she is an actual comparator, but in the event found not be an actual comparator the Claimant relies upon a hypothetical comparator)..*

17. *If so, was it because of race (white), sex (male) and/or age (over 60s)?*

Constructive unfair dismissal

18. *Was the Claimant dismissed? Did the First Respondent do the following things:*

- a) *Failing to take any action against the Second Respondent despite the Claimant's repeated complaints of harassment made on 21 October 2021 (Jane Broderick), 30 November 2021 (Jane Broderick and Richard Bull), 14 December 2021 (Jane Broderick), 5 January 2022 (Jane Broderick), 11 January 2022 (Jane Broderick), 9 February 2022 (Richard Bull and Jane Broderick), 28 June 2022 (Kamaljit Kalirai, Carla Hayes and Jane Broderick), 29 June 2022 (Kamaljit Kalirai, Carla Hayes and Jane Broderick), 2 September 2022 (Carla Hayes), 14 September 2022 (Amanda Cowley), 15 December 2022 (Jane Broderick, Kamaljit Kalirai and Joanne Shankland), 4 January 2023 (Jane Broderick), 19 January 2023 (Trovene Hartley)*
- b) *Failing to engage with the Claimant's correspondence requesting protection from harassment from the Second Respondent made on 21 October 2021 (Jane Broderick), 30 November 2021 (Jane Broderick and Richard Bull), 14 December 2021 (Jane Broderick), 5 January 2022 (Jane Broderick), 11 January 2022 (Jane Broderick), 9 February 2022 (Richard Bull and Jane Broderick), 28 June 2022 (Kamaljit Kalirai, Carla Hayes and Jane Broderick), 29 June 2022 (Kamaljit Kalirai, Carla Hayes and Jane Broderick), 2 September 2022 (Carla Hayes), 14 September 2022 (Amanda Cowley), 15 December 2022 (Jane Broderick, Kamaljit Kalirai and Joanne Shankland), 4 January 2023 (Jane Broderick), 19 January 2023 (Trovene Hartley)*

- c) *Failing to require the Second Respondent to particularise or substantiate the allegation of racist abuse that she made initially on 2 September 2022;*
 - d) *Leaving that allegation of racist abuse made by the Second Respondent unresolved and instead issuing the Claimant with a conduct warning;*
 - e) *Failing to respond to Claimant's request to progress his formal grievance made on 14 September 2022;*
 - f) *Failing to resolve the Claimant's grievance made on 14 September 2022.*
19. *Did that breach either an implied contractual term to afford the Claimant a reasonable opportunity to obtain redress for any grievance and/or the implied term of mutual trust and confidence? In relation to the term of mutual trust and confidence it will need to decide:*
- a) *whether the respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent; and*
 - b) *whether it had reasonable and proper cause for doing so.*
20. *Breach of the implied term of mutual trust and confidence is accepted, if it occurred, as amounting to a fundamental (repudiatory breach). However, for any other alleged term breach it must be determined if the breach was a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.*
21. *Did the claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the claimant's resignation.*
22. *Did the claimant affirm the contract before resigning? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.*
23. *If the Claimant was dismissed (a constructive dismissal), what was the reason or principal reason for the dismissal? The First Respondent relies upon there being a breakdown of the working relationship and asserts that is a potentially fair reason to dismiss. The Tribunal will need to determine if that is the case.*
24. *Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?*
25. *The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.*

The Tribunal's findings of fact

6. The First Respondent is a group of further education colleges providing education and training for students, business clients and stakeholders. The Second Respondent is employed by the First Respondent as an Additional Learning Assistant at the City & Islington College. The Second Respondent, Ms Odu, is a black female in her early 50s.
7. In September 2009, the Claimant was employed as a Learning Support Assistant by the First Respondent. He also worked at City & Islington College. His role involved working as support to students with learning difficulties. In 2015, the Claimant also qualified as a Level 3 teacher and from that date would also work as a substitute teacher, as an Hourly Paid Lecturer, in addition to his contracted support role. The Claimant is a white male in his 60s.
8. Ms Odu's role as an Additional Learning Assistant required her to provide support to individual students with higher needs, whereas the Claimant's role as a Learning Support Assistant involved providing support for all the students in a class.
9. Ms Odu started working for the Respondent in October 2017. For the first few years of her employment, there were no difficulties between the Claimant and Ms Odu.

Allegations 1 and 2 – 21 October 2021

10. On 21 October 2021, Ms Odu was assigned to work with a high-needs autistic student, Student D, during a drama class. Shortly before the students were due to start a performance in the atrium, Student D went missing.
11. Both the Claimant and Ms Odu agreed that when she discovered the student was missing, Ms Odu approached the Claimant for help. The Claimant later described to Mr Mitchell, during the grievance investigation, that Ms Odu was frantic and hysterical when she approached him.
12. Ms Odu said in her evidence to the Tribunal that the Claimant said to her that it was not his problem and not his responsibility and that he did not help her find the student. Ms Odu described in her evidence that she was really taken aback by his response.
13. The following month, on 30 November 2021, the Claimant later sent an email to Mr Bull, who was Ms Odu's Line Manager, in which he noted, "... I didn't drop it all and go find him for her, I told her it was her responsibility. I did actually go searching for him with her, but she shouted in my face in the lift" (p85).
14. The Claimant's account to the Tribunal was that when Ms Odu came to him to ask for help, she was frantic. He told the class teacher, Christine Handy, that the student was missing, delayed the performance, and went to look for

him in the male and disabled toilets on the ground floor. Ms Odu then came with him to the front of the building to take the lift to the third floor toilets. When they were in the lift, Ms Odu shouted at the Claimant that it was not her fault and that no one had told her the student might run away and hide. The Claimant claimed that as she shouted, she sprayed spit on his face, and that he asked her to stop shouting at him.

15. Ms Broderick, who was the Claimant's Line Manager from 2020-2023, said to the Tribunal that she heard about the student being lost when the Claimant came to report to her about the exchange he had with Ms Odu in the lift. Ms Broderick confirmed that the Claimant had reported to her on that day that Ms Odu had shouted at him.
16. Ms Odu denied that she had shouted at the Claimant, and in fact, Ms Odu's evidence to the Tribunal was that she did not think that she had got into the lift with the Claimant. She also was not sure if there was someone else who was also present at the time. Ms Odu's evidence was that Ms Broderick had looked for the student with Ms Odu. Ms Broderick did not however recall having done this.
17. When this incident was later investigated by Mr Mitchell, after the Claimant submitted a grievance, Mr Mitchell concluded that "something occurred which caused [the Claimant] to be upset" but said he could not find evidence that substantiated the events as the Claimant described them.
18. The student was subsequently found, and the performance went ahead albeit later than planned.
19. The Tribunal concluded that when Ms Odu went to the Claimant to ask for help, she was already upset and panicking. She was not pleased with the response that she received. The Tribunal accepted that the Claimant did not say that finding the lost student was "her problem" but found he did tell her that it was her responsibility, as he wrote in his later email of 30 November 2021 to Mr Bull. The Tribunal concluded that this response upset and irritated Ms Odu.
20. The Tribunal also accepted that after this initial exchange the Claimant went with Ms Odu to look for the student and that when they were in the lift together, she shouted at him. We accepted this occurred because it was consistent with what the Claimant reported to Ms Broderick later that day, in his later email to Mr Bull, and also because the Tribunal accepted it was likely to have occurred given Ms Odu was worried and panicking at that time. Ms Odu accepted that sometimes when she gets upset, she speaks at a louder volume.
21. The Claimant worked with a colleague called, Enkhtuya Tserendorj, who was referred to as Tuya. The Claimant's evidence to the Tribunal was that either later that day or on the following day, 22 October 2022, Ms Tserendorj told the Claimant that Ms Odu had said to her that the Claimant "did not care" that the student was missing. When the Claimant later submitted a grievance, he made reference to this matter. He did not specifically refer to the fact that he

had heard this from Ms Tserendorj in his grievance, but when later asked about it by Mr Mitchell, he confirmed then that he had heard this from Ms Tserendorj.

22. Mr Mitchell spoke to Ms Tserendorj as a part of his investigation into the Claimant's grievance but did not ask her about this specific issue. In any event, the Tribunal accepted that the Claimant was told this by Ms Tserendorj. It is highly likely that Ms Odu complained to Ms Tserendorj about the Claimant's response given her evidence to the Tribunal was that she was taken aback by the Claimant telling her that it was her responsibility to find the lost student.
23. The Tribunal also found that the events of 21 October 2021 marked a turning point in the relationship between the Claimant and Ms Odu and that from this point onwards their relationship started to significantly deteriorate.

Allegations 3, 4 and 5 - 30 November 2021

24. On 30 November 2021, Ms Broderick assigned the Claimant to act as the substitute teacher for the morning drama group session. Ms Odu and Ms Tserendorj were also present in the group to support a student who needed 2 to 1 support.
25. The Claimant says that morning he approached Ms Odu, advised her that he had been assigned to cover the class, and tried to discuss the classwork that he had prepared for the student she was assigned to assist. The Claimant alleges that Ms Odu ignored him, kissed her teeth, and walked away. The Claimant told the Tribunal that Ms Tserendorj was present and witnessed these events.
26. The Claimant also said that later that morning, at the end of the class, he went to check on how the student had progressed with the work that he had set for her. He said that Ms Odu had not engaged the student in the work he had set. He said that as he approached them, the student said to him that he owed Ms Odu an apology. The Claimant asked Ms Odu what she had said to the student that had caused her to make this comment. He said Ms Odu ignored him again and walked away (p224).
27. Later that day, the Claimant sent an email to Ms Broderick and Mr Bull setting out his concerns about Ms Odu's behaviour. He complained that she was ignoring him and referred to her behaviour as rude and unprofessional (p85).
28. When the Claimant later complained about this matter in his grievance, Mr Mitchell interviewed Ms Tserendorj, who confirmed that Ms Odu was angry, said something like, "who does he think he is", and "he is not better than us", and made a comment about how the Claimant should not tell her what to do as he was another LSA. Ms Tserendorj also said she did see Ms Odu doing something like kissing her teeth and said she saw Ms Odu walk away (p225).
29. When Ms Odu was asked about this by Mr Mitchell, she denied walking away and denied refusing to communicate with the Claimant. She said that the

Claimant would sit between her and her student and would whisper things to her. She denied kissing her teeth at the Claimant and said she would not be that stupid as others were present. She also denied having made the comments, “who does he think he is”, and “he is not better than us” (p225).

30. When Ms Odu gave her evidence to the Tribunal, she denied knowing what kissing her teeth was, although her evidence was not entirely consistent on this point. She initially said she thought she knew what it was and then she said she was not sure she knew what it was. The Tribunal did not find this to be a credible suggestion as she answered Mr Mitchell’s question on the allegation without appearing to not know what was meant. She is recorded as having said to Mr Mitchell that she would not be so stupid as to do that when other people were around, which suggests she did know what was meant by kissing teeth.
31. In the Respondents’ Grounds of Resistance, it was accepted that Ms Odu made the comment, “who does he think he is” in the presence of a student who subsequently told the Claimant that he should apologise to Ms Odu. It was also accepted that Ms Odu would not engage with the Claimant that day and walked away from him. It was set out that she felt she should not have to take instructions from a peer (p39).
32. In light of the fact that Ms Tserendorj supported the Claimant’s version of events that day, Mr Mitchell concluded in his grievance outcome report that the events did occur as the Claimant said (p226). He noted that he could not comment on Ms Odu’s intentions but “clearly her words and approach were not co-operative or conducive to good working relationships and show a lack of dignity and respect for [the Claimant]” (p226).
33. The Tribunal found that Ms Odu did say words to the effect of “who does he think he is”, “he is not better than us” and “why should we do what he says”. We also found that Ms Odu had made comments to the student she was supporting such that the student was prompted to say to the Claimant that he owed Ms Odu an apology, and the Tribunal found that Ms Odu kissed her teeth and walked away when the Claimant tried to speak to her. We accepted these events occurred, as the Claimant said, because his version of events is consistent with what he reported that day by email to Mr Bull and Ms Broderick and was supported by Ms Tserendorj when she was interviewed by Mr Mitchell. Further, we took into account the fact that parts of what was alleged to have occurred were admitted in the Respondents’ Grounds of Resistance.
34. After the Claimant sent an email to Mr Bull and Ms Broderick complaining about Ms Odu’s behaviour on 30 November 2021, a meeting took place between Ms Broderick, Mr Bull and Ms Odu, although neither Ms Broderick nor Ms Odu could recall the date on which the meeting took place. Ms Broderick described in her witness statement that the meeting was held to discuss Ms Odu’s general attitude to her work and her attitude towards the Claimant. She wrote that while Ms Odu was initially quite defensive in the meeting, she later agreed that she could convey herself as rude, when that is not really her intention. Ms Broderick said the meeting ended positively,

and that both Mr Bull and Ms Broderick thought that mediation would be a good next step, but that Ms Odu refused to go down that route.

Allegation 6 - 13 December 2021

35. On 13 December 2021, the Claimant was assisting a student, Student R, who is blind and who has severe difficulties with mobility. At around 3pm, the Claimant assisted Student R to the car park to help him with his taxi. After the Claimant had taken him to the car park in his wheelchair, he braked his chair on the pavement opposite the nursery. As the student's taxi had not yet arrived in the car park, the Claimant crossed the driveway and exited through the pedestrian gate to see if he could find the driver on the street outside. The taxi was not there so he returned through the pedestrian gate. As the Claimant was walking back to Student R, he saw Ms Odu get into her car. Before he got to the driveway to cross back over to the side where Student R was, he watched Ms Odu drive from her car parking space to the gate which served as an exit.
36. The Claimant's version of events was that Ms Odu drove dangerously fast and when she had to break hard at the gate, her tyres screeched because of the speed she was driving. The Claimant said she was driving in excess of the 5mph speed limit which exists as there is a nursery on the site as well as the college.
37. The Claimant's evidence to the Tribunal was that Student R reacted by yelling "What the fuck was that?", to which the Claimant responded, "Someone going too fast in our car park, you're ok". The Claimant said he felt startled and shocked after the incident and later forgot to put Student R's blind stick and bag into the taxi and the taxi had to return to collect them.
38. Later that day, the Claimant sent an email to Ms Handy in which he described the events. He noted, "As I was heading back to [Student R] a car came screeching past me forcing the taxi to back out to let her through. [Student R] commented what the hell was that or something similar. It was [Ms Odu] in her gold Renault Megan. This show added dangerous to unprofessional." (p87)
39. The following day, 14 December 2021, the Claimant sent an email to Ms Broderick regarding this issue. He made the same observations he made in his email to Ms Handy but also added, "At best she was driving way too fast for that car park (how has she got a parking spot even?) at worst she was being threatening and intimidating in driving at my position at that speed" (p90).
40. The Claimant said Ms Broderick asked him to obtain a statement from Student R, which the Claimant did after Student R returned to college after the Christmas break. The Claimant's evidence was that he typed the student's statement into his computer when Ms Handy was there observing. The relevant part of the statement noted, "Gerry went to look for the taxi, behind the security gate. As he walked back towards me (in the wheelchair) I heard a car skidding (wheel spinning) towards him and going out of the

security gate they forced the taxi driver to reverse. Gerry walked back we discussed what the noise was 'someone driving too fast and dangerously'" (p94).

41. The CCTV footage was requested, and the Claimant was due to have a meeting with Ms Broderick and Mr Bull on 28 January 2022 to review it. The meeting was cancelled as the correct footage had not been obtained. When the meeting was cancelled, the Claimant emailed Ms Broderick and Mr Bull to ask why. He also noted, "I am still taking kissed teeth and grumbles under her breath every time I pass this person or try to talk with Tuya re [a student]. I would like this dealt with ASAP. My life here is miserable with this nonsense hanging over my head." (p95).
42. After some delay, the CCTV footage was obtained. The Claimant says that the footage from only one of the three cameras was obtained, and it did not show Ms Odu driving from her car parking space to the exit. The Tribunal was shown the footage, and it showed the Claimant walking back in through the gate, he appears to be watching Ms Odu in her car, which comes to a stop next to him and behind a vehicle which is waiting to exit. The Claimant says the footage does not capture the speed she was driving but you can tell she applies her breaks hard when she comes to a stop. The Tribunal watched the footage. Ms Odu's car can only be seen for a moment before she stops. The footage did not have sound.
43. Both Ms Odu and Ms Kalirai described in their witness statements that the Claimant had alleged that Ms Odu had tried to run him over. This was not the complaint the Claimant made.
44. The Claimant was later able to view the footage with Ms Broderick and Ms Boi from HR. When Ms Broderick and Ms Boi were asked about this incident by Mr Mitchell, they both said that when the Claimant was shown the footage he commented that it was not how he had recalled the incident. It would seem likely that the Claimant did say this because the Claimant gave several accounts in which he suggested Ms Odu had forced the taxi driver to reverse out and the footage did not show this.
45. In the grievance outcome report, Mr Mitchell concluded that "there was no finding made about the incident one way or the other by management at the time and I have not found any evidence in the course of my investigation that changes this position" (p.227). He also noted in his report "Having heard from [Ms Broderick] and [Ms Boi] it is clear that a thorough investigation was undertaken into this incident at the time and that the CCTV footage showed that the incident, as described by [the Claimant] had not occurred. I have not therefore questioned [Ms Odu] about the incident" (p.227). Mr Mitchell confirmed in his evidence to the Tribunal that he had not seen the footage himself.
46. Although Mr Mitchell did not ask Ms Odu questions about this incident as a part of his investigation, the issue did arise when they were speaking because he noted in his report, "Despite my best efforts she ruled out mediation because she regards Gerry as a liar. She said that Gerry makes up stories

about her and that the car park incident is a classic example of one of his lies" (p.238).

47. The Tribunal found that the Claimant's complaint was wrongly characterised by some of the First Respondent's witnesses as being that Ms Odu had tried to run him over. That is not what the Claimant alleged. The Tribunal did not however find that Ms Odu drove her car towards the Claimant at speed. It may have been the case that she was driving faster than the Claimant considered appropriate, but the Tribunal were not persuaded that the evidence showed she was driving her car towards the Claimant at speed, rather than simply driving towards the exit.

Allegation 7 – 5 January 2022

48. In the List of Issues set out in the case management hearing it was suggested that the First Respondent had raised a concern that the Claimant had not included in his Claim Form an allegation about what happened on 5 January 2022. It was suggested in the List of Issues that the First Respondent was going to submit a response to the Claimant's application to amend to include this complaint. At the final hearing, Mr Perry confirmed that the Respondents were not objecting to the amendment and did not object to the Tribunal considering this allegation.
49. On 5 January 2022, the Claimant was tasked to undertake "meet and greet duty" between 9am - 9.30am. This meant that he was one of the members of staff whose responsibility it was to supervise all the arriving SEN students. Specific students with higher needs were supposed to have their assigned Additional Learning Support workers on site in the morning to supervise them as soon as they arrived. However, in practice Additional Learning Support workers often arrived shortly before classes began at 9.30am.
50. That morning, Student D was dopped off by her transport worker. Ms Odu was due to be supporting her that day, but she had not arrived yet. Even though the transport worker was not employed by the college, she would usually wait with Student D until Ms Odu arrived, but on this morning, the transport worker told the Claimant that she could not wait with the student until Ms Odu arrived. The transport worker asked the Claimant to let Ms Odu know when she arrived that the student had gone to the toilet. The Claimant was aware the student would need additional assistance in the toilet but that she needed assistance from someone who was female. The Claimant told the Tribunal that the cleaner, Maxine, offered to keep an eye on the student until Ms Odu arrived.
51. The Claimant's evidence to the Tribunal was that when Ms Odu arrived, he attempted to inform her that the transport worker had left and that her student was in the toilet. As she spoke to Ms Odu, she ignored him and walked past him.
52. The Claimant said that this was witnessed by another member of staff, Ms Blythe, who is also a Learning Support Assistant. The Claimant's evidence to the Tribunal was that Ms Blythe said, "Wow, how rude was that?". The

Claimant said in his statement that he raised this matter with Ms Broderick on the same day and said that Ms Blythe had witnessed it. He also later sent an email on 11 January 2022, in which he set out what he said had occurred on 5 January 2022 (p94). When the Claimant later sent a chronology of events to Ms Broderick and Ms Hayes (on 28 June 2022) he also referred to this event in that chronology (p99 and p104).

53. When the Claimant later raised a grievance, he referred to this matter when speaking to Mr Mitchell. In the meeting in which he mentioned it, the Claimant was accompanied by Ms Blythe, who confirmed to Mr Mitchell that the events had occurred as the Claimant reported.
54. When Mr Mitchell asked Ms Odu about it, she denied having ignored the Claimant and said that nothing was said between her and the Claimant when she arrived at work and that the Claimant had just walked by her on his way to the kitchen (p228). Mr Mitchell's conclusion was that the incident had occurred as Ms Blythe had witnessed it. He noted, "There is no evidence indicating that [Ms Odu] intended her behaviour to be demeaning or humiliating but this is how it made [the Claimant] feel" (p229).
55. During the hearing, the Tribunal were provided with an email which Ms Odu had sent on 12 January 2022, at 2.44am. It was sent to a number of members of staff including Ms Broderick and Mr Bull. In the email, Ms Odu stated that on 5 January 2022 the Claimant had said hello to her and wished her a happy new year, and that she had ignored him.
56. The Tribunal concluded that the events of 5 January 2022 occurred as the Claimant described them to the Tribunal. Ms Odu arrived late, and when the Claimant tried to approach her to tell her that the transport worker had left and her student was in the toilet, she had ignored him and walked past him. The Tribunal accepted this happened as the Claimant described because Ms Blythe confirmed to Mr Mitchell that she had witnessed this, and it is consistent with what the Claimant reported at the time and shortly thereafter in email to Ms Broderick. It was also confirmed by Ms Odu in her email of 12 January 2022.

Allegation 8 – 25 January 2022

57. It was not disputed by Ms Odu that she refused to attend a mediation meeting with the Claimant. The Tribunal were not presented with any evidence that she specifically refused this offer on 25 January 2022, but the Tribunal accepted that she had made it clear that she was not interested in this.

Allegation 9 and 10 – 25 January 2022

58. The Claimant's evidence to the Tribunal was that at around 9.30am on 25 January 2022, he was walking from the canteen to room G07a, and that the area was busy with students walking to their classes at that time. He said that as he passed the photocopier outside room G14 in the Student Zone, Ms Odu past the Claimant and whispered in his ear, "sadistic bastard". The Claimant said he responded by saying, "what did you call me?", but that Ms Odu looked

back at the Claimant and smirked as she walked on. The Claimant's evidence was that he then said, "Fine, I will just contact Richard, he can deal with it".

59. At 9.46am on the same day, the Claimant sent an email to Ms Broderick and Mr Bull. He recounted the events as set out in the paragraph above (p98). Neither Mr Bull nor Ms Broderick responded to the email.
60. This was one of the matters which the Claimant complained about in his grievance to Mr Mitchell. Mr Mitchell reported in his grievance outcome report that Ms Odu had said she had heard that this incident was alleged to have happened but had no knowledge of it (p229). Mr Mitchell described in his report that there were no witnesses and that as a result the allegation remained "unsubstantiated". However, he noted, "The fact that Gerry reported an incident as occurring at the time however indicates that something was amiss and that there were difficulties in the working relationship" (p230).
61. The Tribunal concluded that on 25 January 2022, Ms Odu walked past the Claimant and whispered in his ear, "sadistic bastard". The Tribunal also found that when the Claimant turned and asked her what she said, she smirked and walked away. The Tribunal concluded this was what had occurred because it was consistent with what the Claimant reported by email approximately 15 minutes later to Ms Broderick and Mr Bull. The Tribunal concluded it was unlikely that the Claimant would make this up.
62. In reaching a decision, the Tribunal took into account the fact that Ms Odu denied having said this but did not find this denial to be convincing. There were other matters which Ms Odu denied, and which were also instances of unprofessional behaviour (such as ignoring the Claimant when he spoke to her and spitting on the floor in front of Ms Tserendorj, which is dealt with below) but which were witnessed by other people who had confirmed they happened.
63. The Tribunal concluded that by this time, Ms Odu had grown to strongly dislike the Claimant, in part because of the events of 21 October 2021 but also because the allegations regarding her driving in the car park on 12 December 2021 had been investigated. As a result, Ms Odu's behaviour towards him became increasingly unprofessional and inappropriate.
64. As noted above, during the hearing, the Tribunal were provided with an email which Ms Odu had sent on 12 January 2022. In the email, Ms Odu set out her account of what had happened on 21 October 2021, when the student had gone missing. She also referred to the fact that the Claimant had offered to assist her in setting up a laptop and she had refused his help. She said she later heard that he had accused her of stealing the laptop. She reported being shocked to be asked on 10 January 2022 if she had tried to run the Claimant down in the car park. She said she was very upset at being accused of attempting to kill a colleague. She reported in the email that she was in the hospital because she was having a nervous breakdown. When asked if she had taken some time off work after attending the hospital she had said she had not as she was a casual worker and so could not afford to take time off.

65. The overall impression from the email was that Ms Odu was very unhappy with the Claimant because of his response when she went to him when the student went missing on 21 October 2021 and because of his allegation about her driving, which appears to have been wrongly relayed to her as being an allegation that she had tried to run him down.

Allegations 11 and 12 – 28 June 2022

66. On 28 June 2022, the Claimant was on 'Meet and Greet' duty. Again, there were no Additional Learning Support workers on site when Student D arrived. The Claimant said on this day, Student D went to the toilet but that on this occasion there was no female staff present. He said that on this occasion, the transport worker offered to wait with Student D.
67. The Claimant's evidence was that by 9.20am there was still no Additional Learning Support workers on site and so he left his post and went to find Ms Hayes in her office. Ms Hayes and the Claimant then walked downstairs together back to the front door. When they arrived back at the front door, at around 9.25am, Ms Odu arrived. The Claimant's evidence was that as soon as Ms Odu arrived she started shouting at Ms Hayes and saying that Ms Hayes should not have sent her a text message asking her where she was. The Claimant said he was shocked about the way she was behaving towards a manager.
68. The Claimant's evidence was that after this incident, he explained to Ms Hayes (who had by this time taken over from Mr Bull as Ms Odu's Line Manager) that he had also been shouted at by Ms Odu. At 10.18am, he thought he had forward to Ms Hayes the email he had sent to Mr Bull on 30 November 2021, but he had accidentally sent it to a different member of staff. By 10.59am he realised his mistake and correctly forwarded the email to Ms Hayes. In the first email he sent at 10.19am he noted, "The start of that nonsense, I won't bore you with the rest. I know from what you just witnessed you get the general idea." (p85).
69. When Ms Hayes was later interviewed by Mr Mitchell about what had occurred that morning, she said that she did recall the incident, but that Ms Odu had not been shouting directly at her. She had however spoken to Ms Odu about her behaviour later that day. Ms Hayes reported to Mr Mitchell that when Ms Odu had seen the Claimant that morning, this had exacerbated her behaviour. Ms Broderick reported to Mr Mitchell that she had heard about this incident from the Claimant and that he had described Ms Odu's behaviour as confrontational. Ms Kalirai said she was aware of the incident because Ms Hayes had come to her to discuss it. She said she was aware that Ms Hayes had spoken to Ms Odu later that day.
70. When Mr Mitchell asked Ms Odu about the incident, she had denied it but accepted that later that day Ms Hayes had spoken to her about the way she had spoken to Ms Hayes. Ms Odu said she had asked the Claimant why he would always speak to a manager, rather than supporting the student.

71. Based on the evidence that we heard from the Claimant, the contemporaneous emails that were sent that day, and what the witnesses reported to Mr Mitchell, the Tribunal found that on the morning of 28 June 2022, Ms Odu was late to work. When she arrived, she shouted at Ms Hayes. She was not pleased that she had been sent a text message asking where she was. She was also not pleased to see that the Claimant had gone to speak to a manager when Ms Odu had not arrived on time.
72. Shortly after this event, the Claimant was working with Ms Handy's class as a Learning Support Assistant. Ms Odu was supporting a specific student outside the classroom.
73. The Claimant's evidence was that at around 10am, Ms Odu came to the classroom to ask Ms Handy for some work for the student. The Claimant said that while Ms Handy was looking down at her computer to obtain the work, Ms Odu was waiting at the door of the classroom. The Claimant said that Ms Odu looked at the Claimant and made a gun finger gesture to her temple whilst looking at the Claimant with a hostile expression on her face.
74. The Claimant's evidence was that he had previously been told by Ms Kalirai to report any further incidents that arose, and so he went straight to Ms Kalirai's office to report the incident to her. Ms Kalirai suggested that they go to find Ms Broderick, which they did, and they agreed to go to see if the area was covered by CCTV cameras.
75. When Ms Odu was later asked about this by Mr Mitchell, she said her gesture was directed towards a student in the classroom indicating to them to "concentrate" (p233). Ms Odu told Ms Boi that she saw a student looking and waving and her and she did a motion with two fingers to her eyes to indicate to the student to concentrate.
76. The Claimant's evidence to the Tribunal was that when he was walking with Ms Broderick and Ms Kalirai to the classroom area, they passed Ms Odu by the photocopier. The Claimant's evidence was that Ms Odu again whispered "sadist" in his ear. He responded by saying, "Are you really so brazen you would abuse me right in front of these two managers?" and then said to Ms Broderick and Ms Kalirai, "Did you hear what she just said to me?". The Claimant said that at that point Ms Odu started shouting and denying she had said anything. Ms Broderick said that she did not hear Ms Odu say anything to the Claimant and she did not hear the Claimant say anything to Ms Odu. Ms Kalirai said she also did not hear either party whisper anything to each other. She said that Ms Odu did start loudly shouting out denials and that she had to ask her to lower her voice.
77. At 11.12am, the Claimant sent an email to Ms Kalirai setting out what he alleged had occurred that morning. He also referred to the fact that he had been told by Ms Tserendorj that Ms Odu had spat on the floor in front of her as a sign of disgust (p109A). Ms Kalirai responded asking for details regarding the times and places of the alleged events. The Claimant responded providing those additional details (p109B).

78. When the matter was later investigated by Mr Mitchell, he spoke to Ms Tserendorj who confirmed that Ms Odu had spat on the floor in front of her. She said that after this she had refused to work with Ms Odu and that by the time of the interview, she was working with someone else instead. When Mr Mitchell asked Ms Odu about this, she denied it had happened.
79. In his grievance outcome report, Mr Mitchell concluded that the spitting incident did occur because Ms Tserendorj reported that it had happened. He did not conclude that the finger gesture incident had occurred or that Ms Odu had whispered sadist to the Claimant because there were no witnesses.
80. The Tribunal found that Ms Odu had been angry about the incident that had occurred when she had arrived at the college and was met by a manager, Ms Hayes, and the Claimant. She was angry with the Claimant as she believed he had been trying to get her into trouble for being late. The Tribunal found that later that morning, she had expressed her anger at the Claimant by making a gun finger gesture to him and whispering sadist in his ear when he had walked past her. The Tribunal found she had also spat on the floor in front of Ms Tserendorj.
81. The Tribunal accepted that these events had occurred as the Claimant said because he reported them immediately and gave an account that is consistent with what he reported to the Tribunal. Ms Hayes' account to Mr Mitchell confirmed that Ms Odu had been shouting when she arrived at the school, and Ms Kalirai confirmed that Ms Odu was shouting by the photocopier and had to be asked to lower her voice. Further, Ms Tserendorj confirmed that as a result of the spitting incident she no longer was willing to work with Ms Odu.
82. The Tribunal found that these events were also indicative of a pattern of unprofessional behaviour by Ms Odu that started in October 2021, when she was angry with the Claimant about the way he had responded to her request that he help her look for a student.

Allegation 13, 14 and 15 – September 2022

83. On 28 June 2022, Ms Odu did not report to anyone that on that day the Claimant had called her a "black cunt". However, when Ms Odu was later called to a meeting with HR, on 5 July 2022, and was asked if she had called the Claimant a sadist by the photocopier on 28 June 2022, she not only denied this but also said that it had been the Claimant who had whispered something to her. She said that he had called her a "black cunt". The Claimant was not informed about this allegation at this time.
84. On 25 August 2022, the Claimant emailed Ms Kalirai and Ms Broderick to ask if Ms Odu was returning to work on the site that he worked at in the new academic year. Ms Kalirai responded stating that Ms Hayes would be in touch.
85. On 26 August 2022, the Claimant returned to work after the summer holidays for the new academic year. His evidence to the Tribunal was that when he

arrived, he saw Ms Odu and she said, "Oh god" and shot a disdainful look at the ceiling.

86. On 30 August 2022, the Claimant emailed Ms Hayes asking for an update regarding the situation with Ms Odu. The following day, Ms Hayes asked the Claimant to attend a short meeting so that she could update him following her previous investigations (p112). The Claimant was told HR would be present and that he could bring a companion.
87. On 2 September 2022, the Claimant attended the meeting with Ms Hayes. Ms Blythe attended as his companion. In the meeting, the Claimant was told by Ms Hayes that Ms Odu had alleged that he had called her "a black cunt". The Claimant says he immediately denied it and said this had not happened. The Claimant said that without any further discussion the Claimant was told that Ms Hayes and HR had already decided the Claimant would be receiving a 'Standards Letter'.
88. Shortly after the meeting, the Claimant sent an email to Ms Hayes in which he set out that he would like a formal record of the accusation, and that he wanted to be provided with the details of when it was said to have occurred (p115).
89. The Claimant was not provided with details of the allegation at the time. When the disclosure process took place in the employment tribunal proceedings he was provided with a copy of Mr Mitchell's notes from his interview with Ms Odu. When the Claimant had previously been provided with a copy of the grievance outcome report, he had not been given the appendices. When the Claimant saw the notes of the meeting, he saw that Ms Odu had alleged this comment had been said on 28 June 2022, when the Claimant had come out of room G10. She said she had walked away from him, but he had followed her, and when he saw Ms Kalirai and Ms Broderick, he then whispered these words to her (p292). She said that this occurred by the printer and that Ms Kalirai had then asked her what the Claimant had said to her. She said she responded saying that if she told her what happened she did not think anything would happen, and she said she just wanted the Claimant to leave her alone. She said that if she reported what happened, she would just be told she had to make peace with him.
90. Ms Kalirai's account of what happened that day, in terms of what she told Mr Mitchell and what she told the Tribunal were not consistent with Ms Odu's account. Ms Kalirai did not report saying that she asked Ms Odu what the Claimant had said to her. Instead, Ms Kalirai's version of events was consistent with what the Claimant reported as occurring. Ms Kalirai heard the Claimant saying to Ms Odu something to the effect of "did you really just say that with two managers present?".
91. On 6 September 2022, Ms Hayes sent an email to the Claimant. Attached to the email was the 'Standards Letter' which the Claimant had been told he would be receiving in the meeting on 2 September 2022. The email noted: "If I can also respond to your request for further pertinent information in relation to the allegation made against you by an ALS colleague. I can confirm this

has been closed and the individual spoken to, who declined to formally report the allegation and as such there are no further details to share” (p116).

92. The Standards Letter noted:

“As discussed in our meeting on the 2nd September, I am issuing this standards letter to you with a view to re-enforcing the college’s expectations in terms of your professionalism and behaviour towards other colleagues. I am pleased you accept the need to always remain professional and that in the future you have assured me that you will avoid any conflict or altercation with colleagues. We did of course discuss that you would immediately report any inappropriate behaviour towards yourself in order that it can be dealt with swiftly and in accordance with our own policies. I do hope we are able to draw a line under the matter and I have been clear with the expectations. Do please refer to the college code of conduct should you require any further clarity. Please note that should this issue or any other conduct issues arise again, further formal action may be taken. If you are unclear about the contents of this letter or have any other queries, please discuss them with me.” (p116A).

93. The Respondent’s Disciplinary Policy states:

“For minor infringements of discipline, your line manager/supervisor will make every effort to resolve the matter by informal discussions with you and may write to you confirming your discussions in a standard setting letter. Your manager will discuss the nature and circumstances of the misconduct and tell you clearly what you need to do or not do and the timeframe. A standards letter doesn’t form part of your formal record and is not kept on your personal file. Where this approach fails to resolve the issue, or repeated minor breaches of discipline occur, the formal disciplinary procedure will be implemented” (p321).

94. The Claimant felt aggrieved to have been given a Standards Letter. He did not feel that he had behaved in a way that warranted it, and the reference to the fact that “further formal action” may follow, indicated to him that the letter was formal action.

95. On 8 September 2022, the Claimant sent an email to Ms Broderick and Ms Kalirai saying that he was too unwell to attend work. He noted, “The stress level has overwhelmed me, I am not eating or sleeping and can’t cope. I have a doctor appointment booked for tomorrow. I will be asking him for anxiety medication and to sign me off.” (p117).

96. The Claimant remained signed of work until his employment terminated when he resigned on 17 February 2023.

97. The Tribunal found that on 5 July 2022, Ms Odu falsely reported that the Claimant had called her a “black cunt”, although the Claimant was not notified

of this until 2 September 2022. The Tribunal did not find that the evidence of the witnesses supported Ms Odu's description of what had occurred. Ms Broderick's evidence and Ms Kalirai's evidence supported the Claimant's version of what occurred.

98. The Tribunal also found that if this had been said, Ms Odu would have reported it immediately. She told the Tribunal in her evidence that she did not report it straight away to Ms Kalirai because she did not trust her. There was no other evidence which supported Ms Odu in her suggestion that she found Ms Kalirai to be untrustworthy and no other evidence that suggested she was someone who was reluctant to raise concerns with senior members of staff.
99. The Tribunal also found it unlikely that if it had occurred that she would have declined to make a formal allegation. It appeared to the Tribunal that Ms Odu made up this allegation once the Respondent's managers and HR were starting to take the allegations that the Claimant was making against her more seriously. It was only when she was called to a meeting to discuss her behaviour on 28 June 2022, that she made this allegation for the first time.
100. Overall, the Tribunal did not find Ms Odu's evidence to be credible and preferred the account given by the Claimant. The Tribunal accepted that the circumstances in which a Tribunal would find someone made up a false allegation that they had been subjected to direct race discrimination would be rare but found this was one of those rare cases.

The Claimant's grievance and subsequent resignation – September 2022 to February 2023

101. On 14 September 2022, the Claimant emailed a formal grievance to HR Director, Amanda Cowley (p123-134). In short, he complained about the various matters set out above.
102. On 15 September 2022, Ms Cowley responded to the Claimant's grievance and noted that one of her colleagues, Mr Narayan, would be in contact (p122).
103. On 23 September 2022, Mr Narayan emailed the Claimant to advise him that the First Respondent had appointed Mr Mitchell to investigate the Claimant's grievance. He noted, "He is an external party that the College has commissioned. He is independent and impartial." (p118).
104. The Claimant was then contacted by Mr Mitchell to arrange a time to have a meeting to discuss his grievance. On 30 September 2022, a meeting was arranged for 6 October 2022 (p139).

105. On 6 October 2022, the Claimant met with Mr Mitchell. Ms Blythe attended to accompany the Claimant. At the meeting, Mr Mitchell informed the Claimant that he was the First Respondent's former HR Deputy Director. After the meeting, on 25 October 2022, the grievance meeting notes were agreed (p148-162).
106. On the same day, 25 October 2022, Mr Mitchell sent the Claimant an email stating "Just to let you know that things have stalled a bit because of half term but I hope to be interviewing others, and therefore making progress, next week". The Claimant then heard nothing further from Mr Mitchell.
107. On 15 December 2022, the Claimant sent an email to Ms Broderick, Ms Kalarai, and the Centre Director, Ms Shankland. He noted he was disappointed that he had not heard anything about his grievance despite the fact that it had been three months since he had submitted it to HR. No one replied.
108. On 3 January 2023, Ms Broderick left a voicemail message on the Claimant's phone asking if he was planning on returning to work and if not, asking him to send a further fit note. The Claimant replied sending her a further fit note.
109. The next day, on 4 January 2023, the Claimant sent a further email in which he asked for an update on his grievance. He noted the lack of response to his grievance was causing him a lot of stress (p173). Ms Broderick did not reply until 2 March 2023, by which time, the Claimant had resigned.
110. On 19 January 2023, the Claimant emailed the new HR Director, Ms Hartley. The Claimant set out in a lengthy letter his concern about the fact that the First Respondent had not responded to his grievance. The following day, Ms Hartley responded by email noting, "I am not overtly aware of the issues you have mentioned in your email so will look into this and come back to you" (p208). Ms Hartley did not in fact respond until 22 March 2023, by which time the Claimant had resigned.
111. Although the Claimant was not aware of this at the time, Mr Mitchell had in fact carried out a number of interviews with the relevant witnesses regarding the Claimant's grievance in November and December 2022. However, when he contacted Ms Odu about being interviewed she did not respond. It was only after other members of staff intervened that Ms Odu agreed to be interviewed on 30 January 2022.
112. On 1 February 2023, Ms Broderick emailed the Claimant to ask if he would be returning to work on 6 February 2023, as his fit note was due to expire. Ms Broderick had not acknowledged the Claimant's previous requests, made on 15 December 2022 and 4 January 2023, for an update regarding his

grievance. The Claimant replied and said he would see his GP to see if he was fit to return. He noted, "As mentioned in my last couple of emails to you I am still waiting to receive anything further regarding the grievance I submitted over 4 months ago" (p185). The Claimant did not receive a response to this email.

113. On 17 February 2023, the Claimant resigned. It had been five months since he had submitted a grievance in September 2022. The Claimant sent his email of resignation to Ms Hartley (p208), which attached a letter of resignation (p210). In the letter he wrote:

"It has now been 4 weeks since I enquired with you directly about what was happening with my grievance I sent to HR on September 14th 2022. You responded on Jan 20th mentioning that you would get back to me. This is the last response I have had. You have yet to follow up this email. It is now 5 months since I initially filed the formal grievance and I am still left without any hope of a resolve. I am honestly shocked that the college is not taking any of this seriously. Nor any of the earlier concerns I have raised with managers since 2021 about Zainab's behaviour towards me as well as students in our care. This has escalated out of all control over the past 15 months because of a total lack of intervention to stop it. The college has now chosen to join together ALS and LSA's and therefore obligating me to work in closer proximity to her. This has further moved everything in the opposite direction of a feasible and tangible resolution."

114. The Claimant received an automated 'Out of office' response from Ms Hartley which stated that she would return on Monday 20 February 2023 (p215). Ms Hartley did not respond to the Claimant's email on Monday 20 February 2023.

115. On 21 February 2023, the Claimant sent an email to Ms Hartley noting that she had ignored his resignation email. He did not receive a response until 22 March 2023.

116. On 2 March 2023, Ms Broderick responded to the Claimant's email sent on 4 January 2023. She noted, "I am not involved in the process; it is sitting with HR and an external organisation". She noted that the Claimant could email them to check what stage of the process they were at (p179).

117. On 6 March 2023, Ms Broderick emailed the Claimant asking if he would be returning to work (p212). The Claimant had resigned three weeks previously and it was clear that Ms Broderick had not been informed.

118. On 22 March 2023, Ms Hartley wrote to the Claimant noting that both times he had emailed her she was on leave. She said she had not seen his email

until that day (22 March 2023) when a member of the team mentioned his case.

119. The Respondent's Grievance Policy states "The manager must confirm in writing to the employee who is responsible for this investigation if they have commissioned someone else to do the investigation. They need to keep all parties informed of what is happening, update them regularly, and tell them the reason for any delays" (p308).
120. On 12 April 2023, the Claimant submitted a Claim Form to the Employment Tribunal.
121. On 12 May 2023, the Claimant received a copy of Mr Mitchell's grievance outcome report by post. This was 8 months after the Claimant had submitted his grievance. The report did not have the appendices attached. The Claimant was told if he wished to appeal, he would need to submit the appeal by 12 May 2023, which was the same day he received the report (p299).

The relevant law

Harassment – Section 26 of the Equality Act

122. Section 26(1) of Equality Act 2010 states "A person (A) harasses another (B) if (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) The conduct has the purpose or effect of (i) Violating B's dignity, or (ii) Creating an intimidating, hostile, degrading, humiliating or offensive environment for B."
123. Section 26(3) states, "In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account - (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect."
124. In *Reed and anor v Stedman* [1999] IRLR 299, the EAT held that the word 'unwanted' is essentially the same as 'unwelcome' or 'uninvited'.
125. It is clear that a claimant does not have to share the protected characteristic in question for the conduct to be 'unwanted' by him or her. The Equality and Human Rights Commission's Code of Practice on Employment (2011) ('the EHRC Employment Code') envisages that a white worker who is offended by a black colleague being subjected to racially abusive language can bring a racial harassment claim (para 7.10).
126. In *Noble v Sidhil Ltd and anor* EAT 0375/14 the EAT held that an employment tribunal had erred in holding that a claimant could not have been subjected to racial harassment by certain statements and by the habitual use of the P-word because he was white British. The statements at issue were that Nelson Mandela was 'evil', that black people were poor because they were

unintelligent, and that President Obama was elected only because he was black.

127. Section 26(1) requires that the conduct in question be 'related' to a relevant protected characteristic. The EHRC Employment Code states that the necessary connection with a protected characteristic can arise where the unwanted conduct is related to the protected characteristic but does not take place because of the protected characteristic' (para 7.10).
128. In *Hartley v Foreign and Commonwealth Office Services* [2016] ICR D17, the EAT stated that a tribunal considering the question posed by section 26(1) must evaluate the evidence in the round, recognising that witnesses 'will not readily volunteer' that a remark was related to a protected characteristic. The alleged harasser's knowledge or perception of the victim's protected characteristic is relevant but should not be viewed as in any way conclusive. Likewise, the alleged harasser's perception of whether his or her conduct relates to the protected characteristic 'cannot be conclusive of that question'. The tribunal in this case had wrongly focused on the perceptions of the claimant's managers as to whether their comments related to her disability, whereas it ought to have looked at the overall picture.

Direct discrimination – Section 13 of the Equality Act

129. 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'.
130. In order to succeed with a claim of direct discrimination under section 13, a claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant. In *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337, HL, Lord Scott explained that this means that "the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class".
131. In *Macdonald v Ministry of Defence; Pearce v Governing Body of Mayfield Secondary School* [2003] ICR 937, HL Lord Hope said with the exception of the prohibited factor, "all characteristics of the complainant which are relevant to the way his case was dealt with must be found also in the comparator". When making a comparison for the purposes of a direct disability discrimination claim, a tribunal must take account of how a non-disabled person with the same abilities as the claimant would have been treated: *Stockton on Tees Borough Council v Aylott* [2010] ICR 1278 CA, following *High Quality Lifestyles Ltd v Watts* [2006] IRLR 850 EAT.
132. In the Supreme Court Judgment in *Lee v Ashers Baking Company Ltd* [2018] UKSC 49, Lady Hale commented at paragraphs 42-45: "The purpose of discrimination law is to protect a person (or a person or persons with whom he is associated) who has a protected characteristic from being treated less favourably because of that characteristic. The purpose is not to protect

people without such a characteristic from being treated less favourably because of the protected characteristic of the alleged discriminator.”

133. In *Gan Menachem Hendon Ltd v De Groen* [2019] 2 WLUK 156, the EAT commented at paragraph 21: “The purpose of discrimination law, [Baroness Hale] said, was the protection of a person who had a protected characteristic from less favourable treatment because of that characteristic, not the protection of persons without that protected characteristic from less favourable treatment because of a protected characteristic of the discriminator. Any conclusion to the contrary would run against the principle that a discriminator's motive for the less favourable treatment is immaterial. More importantly any direct discrimination claim that rested on the discriminator's protected characteristic would be doomed to fail because any comparison between the person receiving the less favourable treatment and “other persons” would always produce the result that there had been no difference in treatment since it could safely be assumed that a discriminator acting on the grounds of his own political (or religious) belief would act in the same way regardless of who was affected.”
134. In *Shamoon v Chief Constable of the Royal Ulster Constabulary*, the House of Lords took the view that, by tying themselves in knots attempting to identify an appropriate actual or hypothetical comparator, tribunals run the risk of failing to focus on the primary question, namely, why was the complainant treated as he or she was? If there were discriminatory grounds for that treatment, then there will usually be no difficulty in deciding whether the treatment was less favourable than was or would have been afforded to others. Lord Nicholls viewed the issue as essentially boiling down to a single question: did the complainant, because of a protected characteristic, receive less favourable treatment than others? In *Stockton on Tees Borough Council v Aylott* [2010] ICR 1278, CA, Lord Justice Mummery stated: “I think that the decision whether the claimant was treated less favourably than a hypothetical employee of the council is intertwined with identifying the ground on which the claimant was dismissed. If it was on the ground of disability, then it is likely that he was treated less favourably than the hypothetical comparator not having the particular disability would have been treated in the same relevant circumstances. The finding of the reason for his dismissal supplies the answer to the question whether he received less favourable treatment”.
135. In *Gould v St John's Downshire Hill* [2021] ICR 1, EAT, Mr Justice Linden commented: “The question whether an alleged discriminator acted “because of” a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the “reason why” question and the test is subjective... For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a “significant influence” on the decision to act in the manner complained of. It need not be the sole ground for the decision... the influence of the protected characteristic may be conscious or subconscious.”
136. The EHRC Employment Code makes the point that the motive or intention behind the treatment complained of is irrelevant (para 3.14). It is not a defence for an employer faced with a claim under section 13 to show that it

had a good reason or a benign motive for discriminating (*James v Eastleigh Borough Council* [1990] ICR 554, HL).

Burden of proof - Section 136 of the Equality Act

137. Section 136 of the Equality Act provides, in essence, that where a claimant proves facts from which a tribunal could conclude in the absence of an adequate explanation that the respondent has unlawfully discriminated against the claimant (a 'prima facie case'), the tribunal must uphold the complaint unless the respondent proves that it did not discriminate. If a claimant establishes a prima facie case of differential treatment from which a tribunal could properly draw an inference that the treatment was because of one of the protected characteristics or because of a protected act, then it will be for the employer to prove that there was some other ground for the treatment.
138. In *Martin v Devonshires Solicitors* [2011] ICR 352, EAT, the EAT recognised that if a tribunal can make positive findings as to an employer's motivation, it need not revert to the burden of proof rules at all. This point was later endorsed by the Supreme Court in *Hewage v Grampian Health Board* [2012] ICR 1054, SC. However, in *Gay v Sophos plc* EAT 0452/10, the EAT noted that it is good practice for a tribunal to address the issue of the burden of proof.
139. In *Madarassy v Nomura International plc* [2007] EWCA Civ 33 Mummery LJ explained the two stages of the process required by the statute as follows: (1) At the first stage the claimant must prove "a prima facie case". That does not mean simply proving "facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination". As he continued, "56. ... The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. (2) If the claimant proves a prima facie case the burden shifts to the respondent to prove that he has not committed an act of unlawful discrimination (paras 56- 58). As Mummery LJ continues: "He may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If he does not, the tribunal must uphold the discrimination claim."
140. Inferences can only be drawn from established facts and cannot be drawn speculatively or on the basis of a gut reaction or 'mere intuitive hunch' (*Chapman v Simon* [1994] IRLR 124 and *Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337). Furthermore, discrimination cannot be inferred only from unfair or unreasonable conduct alone (*Glasgow City Council v Zafar* [1998] ICR 120), although the position may be different if the conduct is unexplained (*Anya v University of Oxford* [2001] IRLR 377, CA).
141. Whilst inferences of discrimination cannot be drawn merely from the fact that the claimant establishes a difference in status and a difference in treatment 'without more', the something more need not be a great deal. In some

instances, it will be furnished by a non-response, or an evasive or untruthful answer, to a statutory questionnaire (*Deman v Commission for Equality and Human Rights* [2010] EWCA Civ 1279)

142. The EAT held in *Anya v University of Oxford and Qureshi v Victoria University of Manchester* [2001] ICR 863, EAT, where there are a number of allegations each single allegation of discrimination should not be viewed in isolation, but the history of dealings between the parties should be taken into account in order to determine whether it is appropriate to draw an inference of racial motive in respect of each allegation
143. The standard of proof that the Tribunal must apply in every case is the civil standard that is the balance of probabilities. In other words, we must decide whether it is more likely than not that any fact is established.

Victimisation - Section 27 of the Equality Act 2010

144. A claim for victimisation is brought under section 27 of the Equality Act 2010: “(1) A person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act.”
145. Section 39(4) of the Equality Act 2010 provides, amongst other things, that it will be unlawful to victimise an employee by subjecting him or her to a detriment.
146. No comparator is required to establish victimisation (*Woodhouse v West North West Homes Leeds Ltd* [2013] IRLR 733). What is necessary is that the employee establishes that they did a protected act and that they have suffered a detriment. Thereafter the examination turns to the reason why the detriment was suffered and is subject to the burden of proof provisions.
147. The question is whether the reason for the treatment was because the worker had done a protected act or that the employer knew that he or she intended to do a protected act, or suspected that he or she had done, or intended to do, a protected act? (*Derbyshire and ors v St Helens Metropolitan Borough Council and ors* [2007] ICR 841, HL, and *Chief Constable of West Yorkshire Police v Khan* [2001] ICR 1065).
148. As the courts confirmed in *Greater Manchester Police v Bailey* [2017] EWCA Civ 425 and *Nagarajan v London Regional Transport* [2000] 1 A.C. 50, the test of causation ‘because’ is not to be approached by asking ‘but for the claimant doing the protected act would the treatment have occurred’ but by asking whether the protected act was the reason for the treatment.

Constructive unfair dismissal - Section 95 of the Employment Rights Act 1996

149. Section 95(1)(c) of the Employment Rights Act 1996 (ERA) states that there is a dismissal when the employee terminates the contract, with or without

notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct.

150. An employee is entitled to terminate his or her contract without notice where the employer is in repudiatory breach of contract, that is a breach going to the root of the contract. In other words, a breach of a fundamental term of the contract. In *Western Excavating (ECC) Ltd v Sharp* [1978] ICR 221, CA, the Court of Appeal held that, for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract. Lord Denning MR stated, '*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.*'
151. In order to claim constructive dismissal, an employee must establish that, there was a fundamental breach of contract on the part of the employer, the employer's breach caused the employee to resign, and that the employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
152. An employee can resign in response to a breach of an express term of the contract or an implied term of the contract, including the implied term of trust and confidence.
153. The relationship of employer and employee is regarded as one based on a mutual trust and confidence between the parties. In *Courtaulds Northern Textiles Ltd v Andrew* [1979] IRLR 84, EAT, the EAT held that it was a fundamental breach of contract for the employer, without reasonable and proper cause, to conduct itself in a manner 'calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties'. In *Malik v Bank of Credit and Commerce International SA (in compulsory liquidation)* [1997] ICR 606, HL, the House of Lords confirmed that the duty is that neither party will, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee.
154. Consequently, there are two questions to be asked when determining whether the implied term of trust and confidence term has been breached: Was there 'reasonable and proper cause' for the conduct? Was the conduct 'calculated or likely to destroy or seriously damage trust and confidence'?
155. The burden of proving the absence of reasonable and proper cause lies on the party seeking to rely on its absence (*RDF Media Group plc and anor v Clements* [2008] IRLR 207, QBD).
156. In *Morrow v Safeway Stores plc* [2002] IRLR 9, EAT, the EAT held that if the employer is found to have been guilty of conduct that seriously undermines trust and confidence, that is something that goes to the root of the contract

and amounts to a repudiatory breach entitling the employee to resign and claim constructive dismissal. Whether such conduct exists in any particular case will always be a matter for the tribunal to determine after hearing the evidence and considering all the circumstances.

157. In *Sharfudeen v TJ Morris Ltd t/a Home Bargains* EAT 0272/16, the EAT confirmed that, even if the employee's trust and confidence in the employer is in fact undermined, there may be no breach if, viewed objectively, the employer's conduct had reasonable and proper cause.
158. A breach of this fundamental term will not occur simply because the employee subjectively feels that such a breach has occurred, no matter how genuinely that view is held. The legal test entails looking at the circumstances objectively i.e., from the perspective of a reasonable person in the claimant's position (*Tullett Prebon plc and ors v BGC Brokers LP and ors* [2011] IRLR 420, CA).
159. In *WA Goold (Pearmak) Ltd v McConnell and anor* [1995] IRLR 516, EAT, the Employment Appeal Tribunal upheld an employment tribunal's decision that an employer is under an implied duty to 'reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have'.
160. In *Blackburn v Aldi Stores Ltd* [2013] ICR D37, EAT, the Employment Appeal Tribunal confirmed that a failure to adhere to a proper procedure is capable of amounting, or contributing, to a breach of the implied term of trust and confidence. It made clear that it is for the employment tribunal to assess in each particular case whether what occurred was sufficiently serious as to amount to a breach of the implied term, since a failure to comply with a grievance procedure may take different forms and thus have different consequences. For example, the EAT considered that a failure to stick to a short timetable would not necessarily contribute to a breach of the implied term, whereas a wholesale failure to respond to a grievance could amount, or contribute, to such a breach.
161. Lord Denning MR noted in *Western Excavating (ECC) Ltd v Sharp*, the employee "*must make up his mind soon after the conduct of which he complains: for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged*".
162. In *WE Cox Toner (International) Ltd v Crook* [1981] ICR 823, the Employment Appeal Tribunal held that while mere delay by itself does not constitute an affirmation of the contract, if the delay went on for too long it could be very persuasive evidence of an affirmation.
163. In *Chindove v William Morrison Supermarkets plc* EAT 0201/13, Mr Justice Langstaff concluded the issue of affirmation is essentially one of conduct, not just passage of time. What matters is whether, in all the circumstances, the employee's conduct has shown an intention to continue in employment rather than resign.

164. In *Fereday v South Staffordshire NHS Primary Care Trust* EAT 0513/10 the EAT has said that although affirmation is needed, it can be implied by prolonged delay and/or if the innocent party calls on the guilty party for further performance of the contract by, for example, claiming sick pay.
165. The Court of Appeal in *Omilaju v Waltham Forest London Borough Council* [2005] ICR 481, CA, confirmed that, to constitute a breach of trust and confidence based on a series of acts (or omissions), the act constituting the last straw does not have to be of the same character as the earlier acts, and nor does it necessarily have to constitute unreasonable or blameworthy conduct, although in most cases it will do so. But the last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely but mistakenly interprets the act as hurtful and destructive of his or her trust and confidence in the employer. As always, the test of whether the employee's trust and confidence has been undermined in this context is an objective one.
166. Where the act that tips the employee into resigning is entirely innocuous, a constructive dismissal claim can succeed provided that there was earlier conduct amounting to a fundamental breach, that breach must not have been affirmed, and the employee resigned at least partly in response to it – *Williams v Governing Body of Alderman Davies Church in Wales Primary School* EAT 0108/19. The EAT considered that in such a case the final act is 'not a last straw in the legal sense at all'.
167. The Court of Appeal in *Kaur v Leeds Teaching Hospitals NHS Trust* [2019] ICR 1, CA, offered guidance to tribunals in last straw cases, listing the questions that it will normally be sufficient to ask in order to decide whether an employee was constructively dismissed: (i) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation? (ii) Has he or she affirmed the contract since that act? (iii) If not, was that act (or omission) by itself a repudiatory breach of contract? (iv) If not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence? (v) Did the employee resign in response (or partly in response) to that breach?

The Tribunal's conclusions

Harassment related to race, sex or age

Allegations 1 and 2

Allegation 1: On 21 October 2021, Ms Odu shouted in the Claimant's face, spraying spit, when locked in lift

Allegation 2: On 21 October 2021, Ms Odu alleged falsely to Ms Tserendorj that the Claimant "did not care" that a student had gone missing

168. The Tribunal's findings of fact in respect of these allegations are set out above at paragraphs 10-23. The Tribunal found that Ms Odu did shout in the

Claimant's face when they were in a lift and found that Ms Odu said to Ms Tserendorj that the Claimant "did not care" that a student had gone missing.

169. The Tribunal found that these actions amounted to "unwanted conduct", and that this created a hostile working environment for the Claimant. The Tribunal took into account that Ms Odu was feeling under considerable stress at the time of these events, as she was looking for a student who was missing. However, the Tribunal accepted that the Claimant found her shouting at him in the lift did create an offensive environment for him and that it was reasonable to have that effect. Further, the Tribunal accepted that telling a colleague that the Claimant did not care, when he had in fact assisted in searching for the missing student, also created a hostile environment for the Claimant.
170. The Tribunal did not however find that the unwanted conduct related to race, sex or age. Prior to this occasion, the Claimant and Ms Odu had worked together for several years without incident. It appears from Ms Odu's evidence to the Tribunal that the difficulties in her relationship with the Claimant started when she was taken aback by his response when she asked him for help finding the student. She appears to have been offended by his suggestion that it was her responsibility to find the student. There was nothing in what Ms Odu was alleged to have shouted at the Claimant in the lift, or said to Ms Tserendorj about the Claimant, that was linked to race, sex or age, and the Tribunal were not persuaded that there was any evidence that Ms Odu was motivated to treat the Claimant this way because of race, sex or age.
171. The Claimant did not point the Tribunal to facts from which a Tribunal could conclude in the absence of an adequate explanation that Ms Odu had unlawfully discriminated against the claimant (a 'prima facie case'). This is not a case of Ms Odu only ever having treated the Claimant in this way. To the contrary, the evidence presented to the Tribunal was that in addition to the Claimant, Ms Odu also shouted at Ms Hayes, and shouted in front of Ms Broderick and Ms Kalirai – a number of different women of different races and ages.
172. The Tribunal concluded that the reason why Ms Odu shouted at the Claimant on 21 October 2021 was because she was angry with him because of the way he initially responded when she asked him to help her and because she was feeling under considerable stress because the student she was supporting was missing. The Tribunal were also satisfied that the reason Ms Odu said to Ms Tserendorj that the Claimant did not care was because she was angry with the Claimant for initially saying to her that finding the student was her responsibility.

173. The Tribunal also took into account the fact that Ms Odu was in her 50s and the Claimant was in his early 60s. The Claimant had not been aware of this at the time and thought that she was considerably younger than she is. The Tribunal were not presented with any evidence that the Claimant's age influenced Ms Odu's actions.

174. The Tribunal were satisfied that the unwanted conduct was in no way related to the protected characteristics of sex, race or age.

Allegations 3, 4 and 5

Allegation 3: On 30 November 2021, Ms Odu said words to the effect that "who does he think he is", "he is not better than us", "why should we do what he says", in close proximity to a student with special needs, which led the student to say to the Claimant that he "owed Zainab an apology"

Allegation 4: On 30 November 2021, Ms Odu refused to explain to the Claimant what she had said near the student with special needs that led the student to say he "owed Zainab an apology"

Allegation 5: On 30 November 2021, whilst the Claimant was trying to speak to her, Ms Odu kissed her teeth and walk away

175. The Tribunal's findings of fact in respect of these allegations are set out above at paragraphs 24-34. The Tribunal found that Ms Odu did say the comments set out above, did refuse to explain to the Claimant what she had said that had caused the student to say the Claimant owed Ms Odu an apology, and did kiss her teeth and walk away when the Claimant was trying to speak to her.

176. The Tribunal had no hesitation in finding that this amounted to "unwanted conduct", and that this created a hostile and offensive working environment for the Claimant. The comments made were designed to undermine the Claimant in his role as a teacher. The comments were inappropriately said in front of a student, and it was rude and unprofessional for Ms Odu to have kissed her teeth and walked away when the Claimant was trying to speak to her.

177. The Tribunal did not however find that the unwanted conduct related to race, sex or age. There was nothing in the alleged conduct that was overtly linked to any of the protected characteristics.

178. As with the previous allegations, it is relevant that Ms Odu's poor conduct in the workplace was not directed solely at the Claimant or at other white colleagues, or male colleagues, or colleagues who were also in their 60s. In addition to the point made above about the fact that Ms Odu also shouted at Ms Hayes, and shouted in the presence of Ms Broderick and Ms Kalirai, Ms Odu also spat on the floor in front of Ms Tserendorj.

179. The Tribunal were satisfied that the reason why Ms Odu behaved in the way she did towards the Claimant on 30 November 2021 was because she was still angry with him from the events of 21 October 2021. Ms Odu may also have been aggrieved that the Claimant, who was a peer, was teaching the class that day, as the Respondents indicated in the Grounds of Resistance, but the Tribunal considered the main reason for her behaviour towards him was that she remained angry about the events from the month before.

180. The Tribunal were satisfied that the unwanted conduct was in no way related to the protected characteristics of sex, race or age.

Allegation 6

Allegation 6: On 13 December 2021, Ms Odu drove her car towards the Claimant at speed within the college ground

181. The Tribunal's findings of fact in respect of this allegation are set out above at paragraphs 35-47. As the Tribunal did not find that Ms Odu drove her car towards the Claimant at speed on 13 December 2021, the Claimant's claim for harassment related to any of the protected characteristics cannot succeed.

Allegation 7

Allegation 7: On 5 January 2022, Ms Odu was rude and ignored the Claimant in front of a colleague

182. The Tribunal's findings of fact in respect of this allegation are set out above at paragraphs 48-56. The Tribunal found that on 5 January 2022, Ms Odu ignored the Claimant in front of a colleague. The Claimant tried to inform Ms Odu the whereabouts of her student, but Ms Odu walked past the Claimant and ignored him. Ms Blythe witnessed this and commented on how rude Ms Odu's response was.

183. The Tribunal found that this amounted to "unwanted conduct", and that this created a hostile and offensive working environment for the Claimant. The Tribunal also considered it would have been embarrassing for the Claimant to have been so obviously ignored in front of one of his colleagues.

184. The Tribunal did not however find that the unwanted conduct related to race, sex or age. There was nothing in the alleged conduct that was overtly linked to any of the protected characteristics, and as noted above, Ms Odu behaved on other occasions to other colleagues, some female, some white and some non-white, some who were younger, in a way that was equally unprofessional.

185. The Tribunal were satisfied that the reason for Ms Odu's conduct on 5 January 2022 was her anger at the Claimant about what had occurred in October 2021 regarding the missing student. This was, in effect, what Ms Odu wrote in her email of 12 January 2022 where she set out that she had ignored the Claimant when he said hello and wished her a happy new year on 5 January 2022. She explained in that email that she was upset with his response to her request for help on 21 October 2021.

186. The Tribunal found this was the reason for her subsequent behavior on 5 January 2022, and that the unwanted conduct was in no way related to the protected characteristics of sex, race or age.

Allegation 8

Allegation 8: On 25 January 2022, Ms Odu refused to attend a reconciliation meeting with the Claimant.

187. The Tribunal's findings of fact in respect of this allegation are set out above at paragraph 57. The Tribunal found that Ms Odu did refuse to attend a mediation-style meeting with the Claimant.

188. The Tribunal were not persuaded that Ms Odu's refusal to attend a mediation meeting with the Claimant could be said to be "unwanted conduct". It may be that the Claimant did not agree with Ms Odu's decision or felt she should have participated in such a meeting, but this was not something she 'did' to the Claimant. In any event, the Tribunal did not find that that Ms Odu refused to do this for any reason related to the Claimant's age, sex or race.

189. The Tribunal found that the reason for Ms Odu's conduct was that she did not want to repair her relationship with the Claimant. She was angry with him, and she felt it was acceptable for her to ignore him given the difficulties they had in their relationship. In her email of 12 January 2022, she wrote, "if I choose not to engage with him on a personal level that should be my choice based on our initial interactions, which I found to be negative and unprofessional."

190. The Tribunal found that the reason for the refusal was because Ms Odu did not want to participate in a mediation meeting with the Claimant, and that her decision was in no way related to the protected characteristics of sex, race or age.

Allegations 9 and 10

Allegation 9: On 9 February 2022, Ms Odu whispered "sadistic bastard" when passing the Claimant outside classroom G.14 in the student zone.

Allegation 10: On 9 February 2022, Ms Odu refused to explain what she meant by the "sadistic comment" when challenged by the Claimant, and instead smirking and walking away.

191. The Tribunal's findings of fact in respect of these allegations are set out above at paragraphs 58-65. The Tribunal found that Ms Odu did whisper "sadistic bastard" when passing the Claimant on 9 February 2022 and that when he asked her what she meant, she smirked and walked away.

192. The Tribunal found that this amounted to "unwanted conduct" and found that it created a hostile, intimidating and offensive working environment for the Claimant. However, as with the other allegations, the Tribunal did not find that this behaviour was related to the Claimant's race, sex or age. The Tribunal took into account that on another occasion, Ms Odu spat on the floor in front of Ms Tserendorj. This is a similar type of hostile, intimidating and offensive behaviour.

193. The Tribunal found that the reason for this conduct was that Ms Odu's relationship with the Claimant had further deteriorated after she had been informed that he had made an allegation about the manner in which she had driven her car in the car park. There is little doubt that she was particularly angry about this as she referred to this in her email of 12 January 2022, and in her evidence to the Tribunal it was clear that she considered the Claimant had lied about what happened on that day. This further deterioration explains the escalation in her adverse conduct towards the Claimant. Ms Odu was also clearly concerned that the Claimant was trying to get her into trouble with management.

194. The Tribunal found that these were the reasons why Ms Odu behaved the way she did to the Claimant on 9 February 2022, but the Tribunal did not find that this behaviour was related to the Claimant's race, sex or age.

Allegations 11 and 12

Allegation 11: On 28 June 2022, Ms Odu made a gun sign with her fingers when looking at the Claimant.

Allegation 12: On 28 June 2022, Ms Odu whispered "sadist" as she passed the Claimant in the corridor between The Mary Rimington Café and classroom G.10.

195. The Tribunal's findings of fact in respect of these allegations are set out above at paragraphs 66-82. The Tribunal found that Ms Odu did make a gun sign with her fingers when looking at the Claimant and found that Ms Odu again whispered "sadist" as she passed the Claimant in the corridor.

196. The Tribunal found that this amounted to "unwanted conduct" and found that it created a hostile, intimidating and offensive working environment for the

Claimant. However, as with the other allegations, the Tribunal did not find that this behaviour was related to the Claimant's race, sex or age.

197. The Tribunal found that the reason for this conduct was that Ms Odu's relationship with the Claimant had deteriorated even further on the morning of 28 June 2022. She was clearly very unhappy that she was texted by Ms Hayes asking where she was, and that when she arrived at work late, the Claimant and Ms Hayes were speaking to one another. In deciding that the Claimant's race, sex or age played no part in Ms Odu's conduct that day, the Tribunal noted that on this day, Ms Odu also shouted at Ms Hayes, shouted in front of Ms Broderick and Ms Kalirai and that she spat on the floor in front of Ms Tserendorj. While Ms Odu's behavior towards the Claimant was worse that day than it was to her other colleagues, her unprofessional behaviour extended beyond the Claimant.

198. The Tribunal found that Ms Odu behaved the in the way she did to the Claimant on 28 June 2022 because of the generally very poor state of their relationship based on previous incidents, but also because she was particularly angry about the events of the morning when she arrived at work. She considered the Claimant was trying to get her into trouble with Ms Hayes that morning and that is why she acted as she did towards the Claimant that day. However, the Tribunal did not find that this behaviour was related to the Claimant's race, sex or age.

Allegations 13, 14 and 15

Allegation 13: On 2 September 2022, Ms Odu alleged falsely to the First Respondent that the Claimant had called her a "black cunt".

Allegation 14: Between 2 September 2022-6 September 2022, Ms Odu failing to further details on the allegation that the Claimant called her a "black cunt".

Allegation 15: On 6 September 2022, Ms Odu failing to formally withdraw the allegation that the Claimant called her a "black cunt" despite no longer wishing to pursue it and further refusing to mediate with the Claimant following this.

199. The Tribunal's findings of fact in respect of these allegations are set out above at paragraphs 83-100. The Tribunal found that Ms Odu did falsely allege that the Claimant had called her a "black cunt".

200. The Tribunal did not find that Ms Odu failed to provide further details about the allegation that the Claimant called her a "black cunt" because the Tribunal was not provided with evidence that anyone asked her to provide further details. The Tribunal also was not provided with any evidence about whether Ms Odu failed or refused to withdraw the allegation that the Claimant called her a "black cunt". The Tribunal only heard evidence that Ms Odu did not want to pursue the allegation or take it further.

201. The Tribunal found that the false accusation amounted to unwanted conduct. It also evidently violated the Claimant's dignity and created an intimidating, hostile, humiliating and offensive environment for the Claimant. He was accused of having made a deeply offensive racist and sexist comment and the Tribunal accepted the Claimant's evidence about the impact that this allegation had on his stress and anxiety levels.
202. The Tribunal did not however find that this conduct related to the Claimant's sex, race or age. It was an allegation of him having said something racist to Ms Odu, but was not related to the protected characteristic of race that related to the Claimant. The Claimant did not find that Ms Odu was motivated by the Claimant's race. The Tribunal concluded that Ms Odu said this knowing it would put the Claimant in the spotlight, and it would avert the negative attention being focused on her because of her behaviour. The Tribunal concluded that if she had fallen out with someone with different protected characteristics (such as a young Asian woman) and was in the same situation she was in with the Claimant, it is likely she would have made this same allegation. The Tribunal did not find that Ms Odu made this allegation because the Claimant was white, but because she knew that it would be a very serious allegation to make against the Claimant and one which would divert attention from her behaviour.
203. The Tribunal did consider the fact that the statutory test requires that the unwanted conduct "related to a relevant protected characteristic" and does not say that the conduct needs to have "related to the claimant's protected characteristic". The comment that Ms Odu said the Claimant had said did "relate to race", in the sense that it was an allegation of an overtly racist comment. However, the comment related to Ms Odu's race and not the Claimant's race. The Tribunal bore in mind the cases which say the claimant does not have to possess the race which the conduct related to, in order for it to have the required effect. However, the Tribunal did not uphold the allegation of harassment related to race for two reasons.
204. Firstly, the Tribunal decided that the unwanted conduct had to relate to the protected characteristic that was identified in the Claim Form and the List of Issues as being the protected characteristic that was relied upon. In this case, the protected characteristic of race that was relied upon was the Claimant's race (white). The Claimant did not bring his case on the basis that he was relying on Ms Odu's protected characteristic.
205. Secondly, the Tribunal bore in mind Lady Hale's comments in the Supreme Court judgment in *Lee v Ashers Baking Company Ltd* that the purpose of discrimination law is to protect a person (or a person or persons with whom he is associated) who has a protected characteristic from being treated less favourably because of that characteristic. The purpose is not to protect

people without such a characteristic from being treated less favourably because of the protected characteristic of the alleged discriminator. These comments were made in the context of direct discrimination but are equally applicable to claims of harassment. The Tribunal considered the aim of the legislation is to protect those who have or associate with someone who has a protected characteristic from adverse treatment because of that characteristic. We did not consider the aim of the legislation extended to allowing people who were accused of having made racist comments to others to claim they had been subjected to harassment related to race if the person making that allegation did not have sufficient evidence for that allegation to be upheld or were not believed. Such a finding could have a chilling effect on people speaking up about racist abuse, on the basis that if they were not believed they could then be accused of harassment related to race themselves. The Tribunal found this was not in keeping with the aims of the Equality Act.

206. For these reasons, the Claimant's claims of harassment related to sex, race or age were not upheld in respect of these allegations.

Victimisation

207. The Respondents accepted that the Claimant carried out a protected act when he submitted a grievance on 14 September 2022 to Amanda Cowley. The Claimant alleged that he was subjected to three detriments because he carried out this protected act:

- a) **Detriment 1:** From 14 September 2022 onwards, the First Respondent ignored or failed to engage with the Claimant's request for evidence to support the "black cunt" allegation made by the Second Respondent on or around 2 September 2022.
- b) **Detriment 2:** From 14 September 2022 onwards, the First Respondent did not investigate the "black cunt" allegation made by the Second Respondent on or around 2 September 2022 and/or did not provide a formal outcome of any such investigation
- c) **Detriment 3:** From 14 September 2022 onwards, the First Respondent failed to taken any or any reasonable disciplinary action against the Second Respondent.

208. The Tribunal found that the First Respondent did not ignore or fail to engage with the Claimant's request for evidence to support the "black cunt" allegation made by Ms Odu. The Claimant wrote to Ms Hayes on 2 September 2022 asking for more details. Ms Hayes responded on 6 September 2022. She noted: "If I can also respond to your request for further pertinent information in relation to the allegation made against you by an ALS colleague. I can confirm this has been closed and the individual spoken to, who declined to

formally report the allegation and as such there are no further details to share.” (p116). Ms Hayes did not provide further details, but not because she was ignoring the Claimant’s request or failing to engage with it. She did not provide further details because Ms Odu had declined to formally report the allegation.

209. In addition, based on the timing of events, the Tribunal concluded that this could not have been an act of victimisation because the Claimant did not submit his grievance until 14 September 2022, and by 6 September 2022, he had already been told he would not be provided with the further details he had requested. The Tribunal did not uphold this allegation of victimisation.
210. With regards to the second alleged detriment, the Tribunal found the situation was the same as with the first alleged detriment. The First Respondent did not fail to investigate the matter or fail to provide the Claimant with a formal outcome because he raised a grievance. They did not investigate the matter because Ms Odu had declined to formally report the allegation. The Claimant was notified of this *before* he submitted his grievance. Therefore, the Tribunal did not uphold this allegation of victimisation.
211. With regards to the third detriment, the Tribunal did not find that the First Respondent failed to take any or any reasonable disciplinary action against Ms Odu because the Claimant raised a grievance. The Tribunal heard evidence that not only was the Claimant provided with a ‘Standards Letter’ but so too was Ms Odu. This was sent to the Claimant and to Ms Odu before the Claimant had raised a grievance.
212. While the Tribunal has found that the Claimant did not make the comment which Ms Odu alleged he had said, this was not a conclusion that the First Respondent had reached at that time. They did not carry out an investigation because Ms Odu had declined to formally report the allegation. Whether that was the correct approach is not a matter that the Tribunal needs to make a finding about, what matters is that the Tribunal was not presented with any evidence which suggested the First Respondent did not take action against Ms Odu *because* the Claimant raised a grievance. As a result, the Tribunal did not uphold this allegation of victimisation.

Direct race, sex, age discrimination

213. The Claimant alleged that the First Respondent treated the Claimant less favourably by:
- a) **Allegation 1:** Disregarding or failing to reasonably act upon the complaints made about the Second Respondent’s conduct on 21 October 2021.

- b) **Allegation 2:** Ignoring or failing to engage with the Claimant's request for evidence to support the allegation made by Ms. Odu on or around 2 September 2022 that the Claimant called her a "black cunt"
- c) **Allegation 3:** Electing not to investigate or to adjudicate upon the allegation made by Ms Odu on or around 2 September that the Claimant called her a "black cunt".
- d) **Allegation 4:** Choosing not to take or failing to take any or any reasonable disciplinary action against Ms Odu.

214. In respect of allegation 1, the Tribunal did not find that the First Respondent failed to act upon the complaint about Ms Odu's conduct on 21 October 2021. The Claimant reported to Ms Broderick that Ms Odu had shouted in the lift. He later raised the same concern with Mr Bull by email on 30 November 2021. Thereafter Mr Bull and Ms Broderick met with Ms Odu to discuss her conduct generally and her conduct towards the Claimant specifically. Ms Broderick's evidence to the Tribunal was that they thought the meeting had gone well and that Ms Odu had recognised that she could come across as rude. The Tribunal found that this was a reasonable way of dealing with Ms Odu's behavior on 21 October 2022, given that at the time Ms Odu shouted in the lift she was panicking as the student was still missing. As a result, the Tribunal did not find as a matter of fact that the First Respondent disregarded or failed to reasonably act upon the Claimant's complaint made about Ms Odu's conduct on 21 October 2021. The Tribunal did not uphold this allegation of direct discrimination.

215. In respect of allegation 2, the Tribunal also did not find as a matter of fact the First Respondent ignored or failed to engage with the Claimant's request for evidence to support the allegation made by Ms Odu that the Claimant called her a "black cunt". As noted above, the Claimant requested these details on 2 September 2022. He received a response to that email on 6 September 2022 from Ms Hayes, which gave an explanation as to why those details were not going to be provided. The Claimant's request was not ignored. He was told that as Ms Odu had declined to make a formal allegation the matter was being treated as closed. The Tribunal did not uphold this allegation of direct discrimination.

216. In any event, the Tribunal did not find that the reason they failed to further probe for details from Ms Odu was in any way influenced by the Claimant's race, sex or age. The Tribunal found that they decided to treat the matter as closed once Ms Odu confirmed that she did not wish to pursue a formal allegation.

217. In respect of allegation 3, the Tribunal found as a matter of fact that the First Respondent did not carry out an investigation or adjudicate upon the allegation made by Ms Odu that the Claimant called her a "black cunt". The

Tribunal accepted that this was capable of amounting to 'less favourable treatment' of the Claimant in circumstances where he was the person about whom the allegation had been made. However, the Tribunal did not find that the less favorable treatment was because of the Claimant's race, sex, or age.

218. The Tribunal found that the "reason why" the First Respondent did not carry out an investigation or adjudication was because Ms Odu confirmed that she did not wish to pursue a formal allegation. The Tribunal were satisfied that this was the sole reason and were not presented with any evidence which indicated the Claimant's race, sex or age had anything to do with this decision. The Tribunal bore in mind that when the Claimant raised a grievance about these matters, they were investigated and Mr Mitchell reached decisions on whether each of the matters about which the Claimant complained had occurred.
219. In respect of this allegation, the Tribunal did not consider that there were facts from which a Tribunal could conclude in the absence of an adequate explanation that the First Respondent had unlawfully discriminated against the Claimant. The only pertinent fact in respect of this allegation is that they did not carry out an investigation or adjudication, but the Tribunal did not consider that was a sufficient fact to shift the burden. In the event that the Tribunal are wrong in this respect, and the burden shifts given the serious nature of the allegation made, then the Tribunal found that the First Respondent did prove that there was some other ground for the treatment, namely the fact that Ms Odu had declined to pursue a formal allegation.
220. In respect of allegation 4, the Tribunal found as a matter of fact that the First Respondent did not take any or any reasonable disciplinary action against Ms Odu in September 2022 regarding what she alleged the Claimant had said to her. The Tribunal accepted that this was capable of amounting to 'less favourable treatment' of the Claimant as she had made what the Tribunal has found to be an untrue allegation. However, the Tribunal did not find that the less favorable treatment was because of the Claimant's race, sex, or age.
221. The Tribunal found that the "reason why" the First Respondent did not take any or any reasonable disciplinary action against Ms Odu in September 2022 was because while the Tribunal has found that the Claimant did not make the comment which Ms Odu alleged he had said, this was not a conclusion that the First Respondent reached in September 2022. They did not carry out an investigation because Ms Odu had declined to formally report the allegation. The Tribunal concluded that this was the reason why the First Respondent did not then take disciplinary action either.
222. In respect of this allegation, the Tribunal did not consider that there were facts from which a Tribunal could conclude in the absence of an adequate

explanation that the First Respondent had unlawfully discriminated against the Claimant. The only pertinent fact in respect of this allegation is that they did not take any disciplinary action against Ms Odu in September 2022. The Tribunal did not consider this fact alone was a sufficient fact to shift the burden. There was no evidence that the Claimant's race, sex or age influenced the First Respondent's decision at this time.

223. In respect of allegations 3 and 4, the Tribunal did go through the process of considering if a hypothetical comparator may have been treated differently. We considered if the First Respondent may have carried out an investigation or taken disciplinary action against Mr Odu if the Claimant had been female, or separately if he had been non-white, or separately if he had been younger (in the age group of 30s to 40s). We found we had not been presented with any evidence from which we could safely or reasonably conclude that the First Respondent would have acted differently in respect of each comparator that we considered.

224. For the reasons set out above, the Tribunal did not uphold the Claimant's claims that he was subjected to direct sex, race or age discrimination.

Constructive unfair dismissal

225. The Tribunal found that the manner in which the First Respondent dealt with the Claimant's grievance breached the implied term of trust and confidence. The Tribunal also found that the manner in which the First Respondent dealt with the Claimant's grievance breached the implied duty to reasonably and promptly afford a reasonable opportunity to an employee to obtain redress of any grievance they may have.

226. The First Respondent failed to keep in touch with the Claimant about the progress of his grievance from mid-October 2022 to when he resigned on 17 February 2023. Furthermore, the First Respondent failed to respond to the Claimant's requests to be updated about what was happening with this grievance. This gave the Claimant the impression that he was being ignored and that his grievance was being ignored. Regrettably this situation went on for many months and despite the Claimant emailing several different people, no one replied with a substantive update about how his grievance was progressing. This failure to keep the Claimant informed was a breach of the First Respondent's grievance policy.

227. In addition, by the time of the Claimant's resignation in February 2023, it had been five months since the Claimant had submitted his grievance. The Tribunal concluded this was an unacceptably long time in which to fail to reach a conclusion on the Claimant's grievance. By the time the Claimant

submitted his Claim Form, his grievance was still outstanding. He did not get an outcome report until 8 months after he had submitted the grievance.

228. The Tribunal concluded, based on what was written in the Claimant's resignation letter, that he resigned in response to this breach. He did not unnecessarily delay before resigning, and he did not affirm the contract. The Claimant was therefore constructively dismissed.
229. The Tribunal went on to consider if the First Respondent had a fair reason to dismiss. In the List of Issues, it was set out that there was a breakdown of the working relationship and the First Respondent asserted that was a potentially fair reason to dismiss. The Tribunal were not persuaded that this was the case. There was a complete breakdown in the working relationship between the Claimant and Ms Odu but that could have been resolved by having one or other party work from a different site. The Claimant gave evidence that if he had been offered a move to a different site he would have accepted because he was so unhappy working with Ms Odu.
230. The Tribunal were not persuaded that there was such a significant breakdown in the relationship between the First Respondent and the Claimant such that was a potentially fair reason to dismiss the Claimant. While the emails sent by the Claimant after he had gone off sick were asking for updates about his grievance, the Claimant was still making positive comments to Ms Broderick. The Tribunal was not presented with any other evidence which suggested the relationship had broken down and could not be repaired. The Tribunal therefore concluded that the Respondent did not have a potentially fair reason to dismiss the Claimant, and that his constructive dismissal was unfair.

Holiday pay

231. The Claimant's claim for holiday pay was not entirely clear at the outset of the hearing. The Claimant said that as his pay slips did not refer to holiday pay payments he did not know if he had been paid holiday pay. There was also some discussion about whether following on from the Supreme Court decision in the case of *Harpur Trust v Brazel*, the Claimant had been paid correctly as he was a term time employee. Ms Boi provided a witness statement during the course of the hearing, and then attended the hearing to give evidence. She explained that the First Respondent had adapted their practices after the Supreme Court decision and explained that the Claimant had been paid for 5.6 weeks of holiday per year. The Claimant accepted Ms Boi's evidence and did not suggest he was still owed any further holiday pay. The Tribunal therefore did not uphold the Claimant's claim that he was owed holiday pay.

Remedy hearing

232. As the Claimant's claim for constructive unfair dismissal has been upheld, a remedy hearing will be listed for one day.

Employment Judge Annand

Date: 28 July 2024

JUDGMENT SENT TO THE PARTIES ON
30 July 2024

FOR THE TRIBUNAL OFFICE

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