



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

**Ms Samina Ashraf**

**v**

**NHS England**

**Heard at:** London Central

**On:** 25 November – 6 December 2024

Chambers – 7 and 8 January 2025

**Before:** Employment Judge Hodgson  
Ms H Craik  
Mr R Baber

## Representation

**For the claimant:** Mr J Ogunshakin, counsel

**For the respondent:** Mr H Sheehan, counsel

## JUDGMENT

1. All claims of direct discrimination fail and are dismissed.
2. All claims of harassment fail and are dismissed.
3. All claims of less favourable treatment contrary to the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 fail and are dismissed.

## REASONS

### Introduction

- 1.1 On 13 July 2022, the claimant presented a claim to London Central employment tribunal. She brought various claims of discrimination and harassment.

### **The Issues**

- 2.1 The issues in this case were discussed on day one. The tribunal produced a list of issues and invited submissions from the parties. Some amendments were made to the list of issues following representations made by the respondent. The claimant accepted the list of issues,<sup>1</sup> which has been treated as complete and accurate.
- 2.2 The issues in this case are set out at appendix 1.
- 2.3 The allegations are put variously as claims of direct discrimination, harassment, and less favourable treatment contrary to the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.
- 2.4 The claimant relies on the protected characteristics of race, religion, and sex. The detail is set out in the issues.

### **Evidence**

- 3.1 The claimant gave evidence.
- 3.2 Mr Azeem Madari gave oral evidence for the claimant.
- 3.3 In addition, the claimant relied on the witness statement of Faizun Nahar, Dr Martin Young, and Ms Folake Olubajo. They were not called to give evidence.
- 3.4 We received a main bundle of documents.
- 3.5 At various times, the claimant referred to a supplementary bundle B. No application was made to include the bundle, or any document in the bundle, until 29 November 2024, the details are set out below.
- 3.6 For the respondent we heard from the following witnesses: Mr Michael Jolly; Ms Sharon Ogunbiyi; Ms Rhian Edwards-Atherly; Mr David Marston; Ms Joyce Antubam; Ms Lynda Frost; Ms Pryia Unjia; and Ms Cigdem Guvec. All the witnesses gave oral evidence.
- 3.7 The respondent filed a position statement.
- 3.8 Both parties served applications, which we detail below.
- 3.9 Both parties provided written submissions, and gave supporting oral submissions.

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<sup>1</sup> As also confirmed in paragraph 20 of her submissions.

## Concessions/Applications

### The application to adjourn

- 4.1 On day one of the hearing, we considered the claimant's written application to adjourn. An application to adjourn had been made prior to the hearing, and had previously been refused. The application was renewed by letter of 23 November 2024. That letter indicated the claimant was preparing for surgery to take place on 25 November 2024. A number of documents were filed in support. The letter of 1 November 2024 indicated the claimant was to attend at an outpatients' clinic for a hysteroscopy appointment. The remaining documents filed indicated that the procedure carried a small risk of complications, and if there were complications they may lead to further medical treatment, including, potentially, an operation under general anaesthetic. However, it appears that the procedure on 25 November was not performed under general anaesthetic, and the letter indicated that the claimant may be indisposed on 25 and 26 November, but indicated no reason why she could not attend on 27 November.
- 4.2 The letter from Haringey Law Centre referred to treatment for rabies, which was to continue throughout the month. There was no medical evidence filed in support.
- 4.3 The tribunal enquired whether the claimant would be able to continue with the hearing on the third day, Wednesday, 27 November 2024. Mr Ogunshakin, on behalf of the claimant, confirmed that he had no reason to believe the claimant would not be able to proceed the application to adjourn was withdrawn, as the tribunal would not require her attendance until day three of the hearing.

### The issues

- 4.4 At the hearing on 25 November 2024, the parties confirmed they had not been able to agree the issues.
- 4.5 On 16 December 2022, EJ Joyce allowed amendments "by consent." However, in allowing those amendments, there was no attempt to produce a list of issues, but instead EJ Joyce stated the parties were to agree the issues.
- 4.6 At a further case management hearing before EJ Emery on 19 January 2024, there was a further attempt to define the issues, albeit a number of matters appear to be included which were not in the amended claim form. However, the respondent alleged that the resulting issues lacked clarity, and they were not agreed.
- 4.7 Following discussions at the hearing, it was agreed that this tribunal would produce a list of issues derived from the amended claim. The tribunal's

list of issues was sent to the parties on the second day of the hearing, which was designated as a reading day.

- 4.8 On day one of the hearing, the respondent stated the claimant had failed to plead the names of comparators for the purposes of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR). At the respondent's request, the tribunal ordered the claimant to set out, for each allegation pursuant to PTWR the specific comparators relied on. The information was to be provided by 16:00 on day two, 26 November 2024.
- 4.9 On 26 November 2024, the claimant forwarded a letter from Haringey Law Centre. The letter identified ten names. The document failed to specify to which allegation the alleged comparator related.
- 4.10 The respondent's application to amend the issues was considered at the start of day three. The tribunal decided that two of the proposed amendments more accurately reflected the claims set out in the claim. The tribunal granted the proposed amendments to allegation 1 and allegation 2. The third application, which referred to allegations 4 and 5 was refused as the tribunal was not satisfied that the respondent's proposed formulation accurately recorded the claims made. The amendments allowed were set out in the amended issues which were sent to the parties.
- 4.11 The claimant made no further application to amend the claim form or to amend the issues drafted by the tribunal.
- 4.12 On day three, Mr Ogunshakin confirmed that the amended claim form (as allowed by EJ Joyce) identified no comparators for the purpose of the PTWR.
- 4.13 We considered the list of comparators sent by the claimant. The tribunal confirmed that if the claimant wished to rely on a comparator for the purposes of the PTWR, the comparator should be named in the claim form, and the claimant should consider whether it was necessary to apply to amend. The respondent confirmed its position was that any comparator for regulation 5 of the PTWR should be named in the pleadings.

The respondent's application to strike out

- 4.14 The respondent referred to its application to strike out dated 19 September 2024. That application was to strike out the entirety of the claim. At the hearing, the application was modified to request strike out approximately of half of the claims. Mr Sheehan stated that for those claims that should be struck out, the claimant had filed no evidence. He accepted the other claims should proceed.

- 4.15 The basis on which the new application to strike out was put was unclear. It was unclear if it was said there was no reasonable prospect of the claim succeeding, or it was put on the basis of failure to actively pursue. The respondent was ordered to clarify its position and in particular to set out a list of those claims the respondent stated were not supported by any evidence. The respondent was to comply by 16:00 on 26 November 2024.
- 4.16 On day two, 26 November 24, the respondent filed particulars of its application to strike out.
- 4.17 The application to strike out identified a number of allegations. The application was based on two main arguments. The first was that to the extent the claimant identified relevant evidence in support of the allegation, any such evidence was inadequate and unresponsive. Second, no evidence had been filed in support of various allegations.
- 4.18 At the hearing it was common ground that a number of allegations could proceed. It follows that the original application, which referred to all the claims, had been either withdrawn or modified.
- 4.19 This claim consisted of approximately 33 individual allegations. Those allegations were put as various allegations of discrimination and harassment which meant the cumulative total of allegations was over 70. Some of those allegations were more supported by evidence than others.
- 4.20 A party may make an application to strike out at any time. However, whether a tribunal grants a separate preliminary hearing may depend on the time when the application is made and whether the tribunal considers it appropriate to have a separate hearing, having regard to the overriding objective. There is no absolute right for a party to have an application for strike out heard before, or at, the final hearing.
- 4.21 Applying for a strike out at final hearing is likely to be disruptive to the proceedings, as it will take time, and may leave insufficient time for the remainder of the case to be heard. Further, when it is inevitable that a number of the allegations will proceed, and must be determined on the evidence, there may be no saving in time by considering, separately, specific allegations to strike out.
- 4.22 The basis of the application to strike out had developed since the original application was made, when it related to the entire claim. It was accepted at the hearing that some allegations must be determined on the evidence. The modified application was not made until the hearing, and given the change in approach, it was treated by the tribunal as a new application to strike out.
- 4.23 There was insufficient time to hear the application strike out separately, as it would have led to the hearing being postponed.

- 4.24 The tribunal decided there would be no saving in time in dealing with the application to strike out prior to hearing the evidence relating to the remainder of the claims. As the application to strike out was based on an assertion that the evidence as presented by the claimant was insufficient to support the claims, or there was no evidence in support of the claims, the consideration of that evidence should not require cross-examination, and should not extend the hearing. The arguments about the sufficiency of the evidence could be advanced by way of submissions and decided at the same time as the remainder of the allegations, if relevant. Dealing with the strike out and then considering those allegations that the respondent accepted could proceed would serve to significantly extend the time needed for the hearing.
- 4.25 In the circumstances, the tribunal did not consider it in the interests of the overriding objective to determine the application to strike out before proceeding with consideration of the evidence in relation to remainder the allegations.

The claimant's application on day three

- 4.26 When the claimant did attend on day three, she stated that she was uncomfortable with Mr David Marston being in the room; she asked that he leave. We adjourned initially to allow the parties to take instructions. After further discussion, we adjourned again, so that the respondent could take instructions on whether it would consent to a CVP hearing.
- 4.27 As a result of those discussions, the claimant applied to exclude at all times save when those individuals were giving evidence specific witnesses – Mr David Marston, Ms Lynda Frost, Mr Stanley Babukutty, and other unspecified respondent employees. In addition, the claimant adopted the tribunal's proposed possible course of action and applied for the hearing to be continued more by CVP.
- 4.28 The claimant's principal submission was that she was caused such discomfort by the presence of the witnesses that she would not be able to participate in the hearing, and would have to withdraw when they were present. In addition, it was submitted that, in some manner, the respondent had failed to make clear that the witnesses would be present, and that their presence could not have been expected. The claimant alleged that, as the respondent had not stated the witnesses would attend, the application could not have been made earlier.
- 4.29 The respondent objected to the witnesses being excluded as that would be an infringement on the principle of open justice, which was not justified. Further, it objected to a CVP hearing on the basis that it would cause distress and prejudice to the witnesses who had prepared on the basis that there would be a hearing in person. Further, there was no good reason why the application could not have been made in advance, and granting it now would cause disruption and affect the timetable.

- 4.30 We find it may be possible to exclude witnesses before they give evidence, although that is not the position usually adopted by a tribunal. When a witness has given evidence, the witness should be treated as a general member of the public. It follows, it is possible the treatment of a witness may be different before and after giving evidence. This is not a matter we need to resolve.
- 4.31 Excluding a person who has a right to attend is a clear infringement on the principle of open justice and requires an order pursuant to rule 50 Employment Tribunal Rules of Procedure 2013. It would be possible to exclude a person if the tribunal found it to be required in the interests of justice.
- 4.32 It is necessary to consider the convention rights of any relevant person. This is not limited to the claimant's right to a fair hearing. The right to a fair hearing is also the respondent's right.
- 4.33 In considering the application, it is necessary to give full weight to the principle of open justice. It is for the claimant to advance relevant evidence demonstrating that the order is necessary.
- 4.34 In this case, the claimant asserted that she was uncomfortable such that she would have to leave the hearing. This was not supported by any specific medical evidence. However, the tribunal accepted that the claimant appeared to be uncomfortable.
- 4.35 Excluding witnesses, particularly after they give evidence, would be infringement of open justice and must be fully justified. The submissions of the claimant fell short of providing justification supported by sufficient evidence.
- 4.36 Albeit the tribunal was satisfied the claimant felt discomfort, it was not satisfied that there was sufficient evidence on which the tribunal could decide whether it was likely the claimant would be unable to proceed.
- 4.37 The respondent objected to a CVP hearing on the basis that it would cause specific prejudice to its witnesses, and would be inconsistent with their desire for, and preparation for, a hearing in person.
- 4.38 The tribunal was not satisfied that there was any specific evidence that the respondent's witnesses would suffer prejudice of any form if the matter proceeded by CVP hearing.
- 4.39 The position was unsatisfactory. It was clear that the hearing in person was causing the claimant difficulties. The claimant could have, and should have, applied for a CVP hearing at an earlier date. The tribunal did not accept the claimant's assertion that it was reasonable to assume the witnesses would not attend the hearing. It was not a reasonable assumption, and her assumption was entirely inconsistent with the normal practice in a tribunal.

- 4.40 There was no relevant medical evidence in support of the claimant's allegation that she was suffering stress, anxiety, and discomfort, or that it would be exacerbated by a hearing in person, or that a hearing by CVP would alleviate difficulty. Nevertheless, having regard to the claimant's reaction in the hearing, the tribunal was satisfied that claimant was suffering significant discomfort.
- 4.41 The claimant stated that she would have no objection to the witnesses remaining in a CVP hearing. Conducting a hearing by CVP is within the discretion of the tribunal. We were satisfied that it would reduce the anxiety felt by the claimant and it was likely it would enable her to participate in the hearing. There was a risk that the claimant would not be able to cope with an in person hearing. We were not satisfied that there would be any specific prejudice caused to the respondent, other than the potential prejudice of additional costs caused by delay.
- 4.42 A party may prefer a hearing in person or prefer a hearing by CVP. Generally, it is possible for a hearing to be held in either way. A CVP hearing is not an inferior hearing. It is not unfair hearing.
- 4.43 In the circumstances, there was a real risk that an in-person hearing could undermine the claimant's ability to participate. There was no risk a CVP hearing would undermine the respondent's ability to participate. The hearing could be conducted fairly by CVP, and it would allow the hearing to take place. It was feasible to proceed by CVP, albeit some time would be lost. Having considered all the circumstances, we granted the application for a CVP hearing. We refused the application to exclude any of the respondent's witnesses.

Application for reasons

- 4.44 Oral reasons were given for the decision to proceed with a CVP hearing. Mr Sheehan requested written reasons, and those reasons are set out above.
- 4.45 Further, Mr Sheehan made an application for written reasons for what he alleged was a previous decision. He appeared to allege the tribunal had made a decision that the application for a strike out must be put in writing, whereas the claimant had been allowed to proceed with an application for a CVP hearing which was not in writing. He appeared to allege that this was some form of inconsistency of treatment.
- 4.46 The tribunal requested that he clarify what decision he required written reasons for; no clarification was received.
- 4.47 We doubt that a statement that an application should be made in writing is, in itself, a case management decision for which reasons should be given. If reasons are necessary, they can be stated simply. In any application, it is necessary to ensure that the application is understood by



the tribunal and by the other party. The issues in relation to the potential need for a CVP hearing were clear, fully understood, and capable of being determined at the hearing. Both parties were given an opportunity to make full submissions. Time was given to both parties to allow them to take instructions. Requesting the application for a CVP hearing in writing would have been unnecessary and led to a waste of costs. It would not further the overriding objective and would have dealt with the matter in a way which was disproportionate, wasted time, and wasted expense. The respondent's application to strike out had initially been put in writing in September. Effectively, that original application was withdrawn, and a new, substantially different, application made. The subject of that application and the grounds were unclear both to the tribunal and the claimant. The respondent could have made an application at any time, but instead chose to wait until the tribunal hearing has started and then sought to bring a complicated application orally. That caused significant difficulty to the tribunal and to the claimant. At the very least, it was appropriate that the application should be clarified so the merits of the application could be considered properly. It was not reasonable to seek to clarify the application orally, and any attempt to do so would have led to serious uncertainty and potential disadvantage to the claimant. The respondent's attempt to deal with the amended application to strike out without a written application was inappropriate.

Further bundle of documents

- 4.48 On day one of the hearing, the parties produce a bundle of documents. Mr Ogunshakin indicated that the claimant wished to rely on a second bundle. He did not have the bundle to hand, but understood it had been delivered to the tribunal. The tribunal clarified that it would be necessary to obtain the bundle, and the claimant should apply for any relevant documents to be admitted into evidence.
- 4.49 On day three, the hearing continued in person. Bundle B was not produced to the tribunal, and no application for its inclusion was made.
- 4.50 During the course of day three of the hearing, the claimant applied for the hearing to go online. The tribunal clarified that if the claimant wished to rely on bundle B, the relevant document should be made available to the parties in a format which can be viewed online. The bundle should, if practicable, be produced as a single PDF. The tribunal confirmed that it would be necessary to apply to include any relevant documents. Mr Ogunshakin stated a PDF bundle could be provided.
- 4.51 During cross-examination, the claimant referred to documents contained in bundle B, but without producing the relevant documents. The respondent objected. The tribunal confirmed that the claimant may seek to include those documents, but the documents should be produced and an application made for the inclusion of any relevant document. No such documents were produced during the course of the claimant's cross-examination.

- 4.52 During the claimant's cross-examination, Mr Ogunshakin indicated that the claimant proposed to make an application to include the bundle. The tribunal noted that he could not seek the claimant's instructions until after she finished her evidence.
- 4.53 On Friday 29 November, 15:39, by email, the claimant's solicitors sent a bundle of documents and an application. The bundle ran to 544 pages and appeared to be a mix of documents some of which had already been disclosed in other documents.
- 4.54 On Sunday 1 December,, at 22:26, the claimant's solicitor sent a further email. The application alleged that the bundle was relevant and made various assertions. On 2 December 2024, at 09:23, the claimant filed two documents being a witness statement in support of the application, and a further application, which appeared to be in the same or similar terms to the previous application.
- 4.55 The statement alleged the claimant had been unwell for two years, and made reference to the tribunal's refusal to adjourn the hearing.
- 4.56 At the hearing, the respondent indicated that a number of the documents had not been disclosed until 21 November 2024, shortly before the hearing.
- 4.57 On Monday 2, December the tribunal asked Mr Ogunshakin to clarify the position. He confirmed the claimant did not propose to file any further evidence, but continued to rely on her statement. He asserted that a number of the documents in Bundle B had been referred to the claimant's statement. The tribunal asked him to confirm which documents in bundle B had already been referred to in the claimant's witness statement, and when they were disclosed to the respondent. He indicated he would deal with that in the morning break, the tribunal ordered it should be done, in any event, by start of the afternoon session. The tribunal had previously made it clear that any document in bundle B could be referred to, at any time, particularly during cross-examination, and any dispute about admissibility would be dealt with when it was referred to. The tribunal reiterated that position.
- 4.58 During the course of cross-examination of the respondent's witnesses, Mr Ogunshakin referred to one document at page 319 of bundle B. This appeared to confirm the training record of other employees, including Mr Aaron Kiss. He made no reference to any other document in bundle B.
- 4.59 Mr Ogunshakin failed to comply with the order of 2 December 2024 and failed to set out details of what documents in bundle B had previously been referred to in the claimant's statement. That clarification was not provided until the tribunal received written submissions on day seven of the hearing, by which point both parties had completed their cases. As Mr Ogunshakin failed to comply with the tribunal's order, or make any further

submissions to include the bundle B, or any document therein, the application was not resolved on day six of the hearing prior to the respondent's case closing.

The submissions

- 4.60 Mr Ogunshakin filed initial written submissions just after nine on day seven of the hearing. Thereafter, a further set of written submissions were filed approximately ten minutes later. At the hearing, he indicated that the first set of written submissions were withdrawn, and he relied on the second set of written submissions, which had been prepared by the claimant. He indicated that he had now complied with the tribunal's order and the detail of those bundle B documents were set out at paragraph 5 of the submissions.
- 4.61 Mr Ogunshakin confirmed he was not applying to amend any claim. He confirmed that there was no application to adduce further evidence from the claimant.
- 4.62 Both parties confirmed that the application to admit further documents should form part of the submissions, and the tribunal should decide the point when considering the claim as a whole. Neither party applied to recall any witness.
- 4.63 The tribunal asked the respondent to clarify whether it accepted that the documents identified were in fact referred to in the witness statement, and if so, when they were disclosed to the respondent, and whether they formed part of the trial bundle.
- 4.64 The respondent confirmed its position in writing on day eight of the hearing. To the extent it is necessary to refer to any of the documents identified in bundle B, we will consider that below when considering the relevant evidence and factual findings.
- 4.65 We find there is no reason why the claimant could not have produced the individual documents, either exhibited to her original witness statement, or by way of a supplementary bundle. The bundle could have been produced as a PDF, and the claimant could have referred to the documents at any point during her evidence.
- 4.66 Had the claimant produced the relevant documents, the tribunal would have made a ruling on their admissibility. Instead, the claimant failed to put the documents before the tribunal.
- 4.67 Further, it was open to Mr Ogunshakin, at all times, to refer to any document in bundle B during his cross-examination. If necessary, the tribunal would have ruled on the relevance and admissibility of the document. Mr Ogunshakin referred to only one document, as noted above. It was of little, if any, relevance. No specific objection was taken to its inclusion in evidence

4.68 We considered those documents said to be in bundle B which the claimant stated were referred to in her witness statement.

4.69 Mr Ogunshakin referred to seven separate documents which are identified as follows:

Page 2 - (page B16 of Bundle B  
Page 4 - B8, page 50 of Bundle B)  
Page 18 – Appendix 3, Appendix 3 B4, page18)  
Page – 5 page 115 of Bundle B  
Page – 6 - Bundle B22  
Page 17 - B48, page 415 of Bundle B.  
Page 21, bundle B. page 434

4.70 In each case, whilst there is general reference to the bundle, or an appendix to the bundle, the specific document is not identified either in the witness statement, or in the subsequent clarification contained in the submissions in support of the application. It follows that the documents were never adequately identified, in breach of the order to provide full detail.

4.71 Nevertheless, we considered what appeared to be the possible documents referred to in the bundle. We briefly summarise the position for each document or series of documents. In general, the documents referred to appear to have little if any relevance to the matters we needed to consider. It was not necessary to exclude them. Given the limited relevance, there was no disadvantage to the respondent in our considering them, and there was no need for further cross-examination. This is our summary of the documents the claimant appears to reference:

- Page B16 of Bundle B – the documents at page 16 include an email of 11 February 2016 to the claimant from Jane MacPherson. It refers to drafting documents for the website, and is of no assistance.
- B8, page 50 of Bundle B - this is an email from Josie Turner regarding redundancies sent on 27 February 2017. It is a routine document which provides reference to a relevant form following a conversation with the claimant. It is of no assistance.
- Appendix 3, Appendix 3 B4, page18 - this is referred to at page 4 and appears to be reference to February 2017. It is unclear what document the claimant intends to refer to. It possibly refers to page 81. The document appears to be of no assistance, the relevance is not explained by the claimant, either in her statement or in her the submissions.
- Page 115 of Bundle B – this refers to an email from Mike Jolley of 7 December 2017, which confirms the claimant’s job title and her return date, 19 December 2017. It is a routine email and of no assistance.

- Bundle B22 -this refers to the claimant being asked to google CYPIAPT . It is most likely a reference to page 132 and a string of emails around 21 December 2017. There is reference to a Google link, and a simple introduction to a CYP programme. The correspondence is innocuous and does not assist.
- B48, page 415 of Bundle B - this concerns attendance at a meeting. Mr Marston suggests the claimant attend, as the attendance of both was unnecessary, he suggests the claimant feedback to him. This is innocuous routine correspondence. It does not assist
- Bundle B- page 434 – this concerns an email of 15 June 2021 when Mr Marston suggests that the claimant should avoid actively working on non-working days. The associated correspondence is innocuous and demonstrates Mr Marston being supported to the claimant.

- 4.72 In her submissions, the claimant makes approximately 38 further references to bundle B. The tribunal considered those references. We found none of them to be of assistance.
- 4.73 We will refer to any bundle B documents, if necessary, when considering our conclusions. The bundle B documents were not dealt with, adequately or at all, in the claimant’s statement, or put to the respondent’s witnesses. Had they been of material assistance or relevance, we would have sought further submissions.
- 4.74 After the hearing the claimant filed an application relating to a new claim. The tribunal confirmed it could not deal with any application about a different claim as part of this case.

### **The Facts**

- 5.1 On 21 January 2016, the respondent employed the claimant. She is currently a deputy quality, patient safety and commissioning manager (band 7). She has been absent on long-term sick leave since 7 March 2022.
- 5.2 Health Education England, was a non-departmental public body established under the National Health Service Act 2006 to ensure an effective system for the planning and delivery of education and training to employees, prospective employees, of NHS services in England. The functions of Health Education England transferred to NHS England from 1 April 2023. Health Education England no longer exists and all its functions were transferred to NHS England.
- 5.3 The claimant commenced early conciliation on 13 April 2022. It concluded 24 May 2022. She issued proceedings on 13 July 2022, at a time when she was on long-term sick leave. The claim form identified wide-ranging allegations dating back to 2016. The claim form was subsequently amended.

- 5.4 On receipt of the claim form, the respondent commenced an investigation, it being the respondent's position the complaints had not previously been raised. The investigation was undertaken by an external investigator. The investigation report concluded there was no substantial evidence to support the allegations. However, it was clear that the claimant considered the relationship between her and Mr David Marston, who had been the claimant's manager since December 2017, had broken down.
- 5.5 The allegations before us extend over a long period. Many of them are unparticularised, or insufficiently particularised.
- 5.6 In reaching our conclusions, we have had regard to all of the relevant facts. We have had regard to the totality of the claims and the evidence. It is not necessary to record our findings in relation to all of the evidence raised before us. As the allegations are so wide-ranging, in order to assist the reader, we have set out, where necessary, the facts particularly relevant to each allegation at the point the allegation is considered in our discussion and conclusions. However, for each allegation we have had regard to the totality of the evidence and the accumulated facts.

### **The law**

- 6.1 Direct discrimination is defined in section 13 of the Equality Act 2010.

Section 13 - Direct discrimination

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

- 6.2 **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 is authority for the proposition that the question of whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as he was. Accordingly:

**employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. (para 10)**

- 6.3 **Anya v University of Oxford** CA 2001 IRLR 377 is authority for the proposition that we must consider whether the act complained of actually occurred (see Sedley LJ at paragraph 9). If the tribunal does not accept there is proof on the balance of probabilities that the act complained of in fact occurred, the case will fail at that point.

- 6.4 Harassment is defined in section 26 of the Equality Act 2010.

**26(1) A person (A) harasses another (B) if--**

- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of—
  - (i) violating B's dignity, or
  - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

...

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

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are--

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

6.5 In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT (Underhill P presiding) in the context of a race discrimination case, made it clear that the approach to be taken to harassment claims should be broadly the same. The EAT observed that 'harassment' is now defined in a way that focuses on three elements. First, there is the question of unwanted conduct. Second, the tribunal should consider whether the conduct has the purpose or effect of either violating the claimant's dignity or creating an adverse environment for him or her. Third, was the conduct on the prohibited grounds?

6.6 In **Nazir and Aslam v Asim and Nottinghamshire Black Partnership UKEAT/0332/09/RN, [2010] EqLR 142**, the EAT emphasised the importance of the question of whether the conduct related to one of the prohibited grounds. The EAT in **Nazir** found that when a tribunal is considering whether facts have been proved from which a tribunal could conclude that harassment was on a prohibited ground, it was always relevant, at the first stage, to take into account the context of the conduct which is alleged to have been perpetrated on that ground. That context may in fact point strongly towards or against a conclusion that it was related to any protected characteristic and should not be left for consideration only as part of the explanation at the second stage.

6.7 In **Dhaliwal** the EAT noted harassment does have its boundaries:

**We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of**

**hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase. We accept that the facts here may have been close to the borderline, as the Tribunal indeed indicated by the size of its award.**

- 6.8 Harassment may be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.
- 6.9 A claim based on 'purpose' requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what that true motive or intent actually was: the person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift, as it does in other areas of discrimination law.
- 6.10 Where the claimant simply relies on the 'effect' of the conduct in question, the perpetrator's motive or intention even if entirely innocent does not in itself afford a defence. The test in this regard has both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view: the subjective element. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that effect: the objective element. The fact that the claimant is peculiarly sensitive to the treatment does not necessarily mean that harassment will be shown to exist.
- 6.11 The requirement to take into account the complainant's perception in deciding whether what has taken place could reasonably be considered to have caused offence reflects guidance given by the EAT in **Driskel v Peninsula Business Services Ltd [2000] IRLR 151**, which concerned the approach to be taken by employment tribunals in determining whether alleged harassment constituted discrimination on grounds of sex. In **Driskel** the EAT held that although the ultimate judgment as to whether conduct amounts to unlawful harassment involves an objective assessment by the tribunal of all the facts, the claimant's subjective perception of the conduct in question must also be considered.
- 6.12 Section 23 defines what is required of a comparator in the case of direct discrimination.

**Section 23 Equality Act 2010 - Comparison by reference to circumstances**

**(1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.**

- 6.13 Section 136 Equality Act 2010 refers to the reverse burden of proof.

**Section 136 - Burden of proof**

**(1) This section applies to any proceedings relating to a contravention of this Act.**



(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

(4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.

(5) This section does not apply to proceedings for an offence under this Act.

(6) A reference to the court includes a reference to--

- (a) an employment tribunal;
- (b) ...

6.14 **In considering** the burden of proof the suggested approach to this shifting burden is set out initially in **Barton v Investec Securities Ltd [2003] IRLR 323** which was approved and slightly modified by the Court of Appeal in **Igen Ltd & Others v Wong [2005] IRLR 258**. We have particular regard to the amended guidance which is set out at the Appendix of **Igen**. We also have regard to the Court of Appeal decision in **Madarassy v Nomura International plc [2007] IRLR 246**. The approach in **Igen** has been affirmed in **Hewage v Grampian Health Board 2012 UKSC 37**

#### Appendix

(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant which is unlawful by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.

(2) If the claimant does not prove such facts he or she will fail.

(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.

(4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.

(5) It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

**(6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.**

**(7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.**

**(8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.**

**(9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.**

**(10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.**

**(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.**

**(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.**

**(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.**

6.15 It is accepted the claim was, at all material times a part time worker for the purposes of The Part-time Workers (Prevention of Less Favourable Treatment ) Regulations 2000 (PTWR).

6.16 Less favourable treatment is defined in regulation 5:

**5(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—**

- (a) as regards the terms of his contract; or**
- (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.**

**(2) The right conferred by paragraph (1) applies only if—**

- (a) the treatment is on the ground that the worker is a part-time worker, and**
- (b) the treatment is not justified on objective grounds.**

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.

...

6.17 The claimant must establish an actual comparator; there is no provision for a hypothetical comparator (see **Carl v University of Sheffield** [2009] IRLR 616, EAT).

6.18 The comparator is defined by regulation 2(4).

(4) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place—

(a) both workers are—

(i) employed by the same employer under the same type of contract, and

(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and

(b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.

6.19 The need to be on the ground of being a part-time worker is not a simple but for test. There must be a causative element (see, e.g, **Forth Valley Healthcare Board v Campbell** EA-2020-000093. There may be doubt as to whether part-time status must be the sole ground, or an effective or material factor. We have not needed to address this. As can be seen for our conclusions, we have found that part-time status was no part of any reason for the claimant's treatment, whether seen as a sole ground or some form of material ground.

6.20 As for the burden of proof, in circumstances where the treatment is established, we note regulation 8(6) PTWR.

(6) Where a worker presents a complaint under this regulation it is for the employer to identify the ground for the less favourable treatment or detriment.

## **Discussion and conclusions**

7.1 There are claims of direct discrimination, harassment, and less favourable treatment in breach of the PTWR. The claimant relies on the protected characteristics of race, religion, and sex.

- 7.2 In the issues, consistent with the claim form, the claimant describes her race as Asian and states that she is Muslim. In her witness statement, she refers to herself as a Pakistani Muslim mother. We sought further clarification during submissions, and the claimant described her relevant protected characteristics as follows: “British (born in the UK), Pakistani (ethnicity), Muslim (religion), Mother (my cherished role).”
- 7.3 We will consider each of the allegations individually, albeit, as noted, we will have regard to the totality of all of the evidence and facts when considering each of the allegations.
- 7.4 For claims of direct discrimination it is first necessary to consider whether the alleged treatment is established. This gives rise to two broad questions. First, is the alleged treatment adequately identified at all, such that the respondent can know the case it is to answer, and the tribunal know the case it is to decide. Where an allegation is put in general terms, it may be that no specific treatment is identified at all. Second, has the claimant proved that the treatment occurred. In deciding whether any treatment happened, it is for the claimant to prove it occurred. The reverse burden of proof is only relevant when considering whether the treatment contravened the relevant provision.
- 7.5 When the claimant has established the treatment occurred, it is then necessary to consider whether the relevant provision was contravened. In the case of direct discrimination, it is necessary to consider the reverse burden of proof under section 136. We must ask whether there are facts from which we could decide, absent any other explanation, the provision has been contravened. If we conclude that there are facts from which we could decide that the relevant provision has been contravened, we must consider the respondent’s explanation. It is for the respondent to establish an explanation for the treatment. If it establishes an explanation, on the balance of probabilities, which is in no sense whatsoever because of the protected characteristic, the claim fails.
- 7.6 When considering the claims of harassment, first, the claimant must establish the treatment has occurred. If it has occurred, it is necessary for us to consider whether it was the purpose of the alleged perpetrator to harass. When considering purpose, the reverse burden is engaged, if we find there are facts from which we could conclude that the purpose was to harass, it is for the respondent to establish its explanation. If we find that it was not the purpose, we must go on to consider whether it had the effect, and we have considered the case law above. If we find the treatment occurred, and it was either the purpose or effect to harass, it is still necessary to consider whether it related to the relevant protected characteristic. The concept of “related” in harassment may be wider the concept of “because of” in direct discrimination.
- 7.7 When considering those claims put as a breach of the PTWR, it is first necessary to consider whether the treatment occurred. It is for the claimant to prove it did. It is then necessary to consider whether the

claimant has identified and pleaded a comparator. If a comparator is identified, it is necessary to go on and consider causation, as referred to above. The treatment must be on the ground that the claimant is a part-time worker.

7.8 With this in mind, we now consider the allegations.

*Allegation 1 – in 2016, on a date unspecified, by Mr Paul Smollen ignoring the claimant’s request for a new manager. The nature and date of the request is not specified. [direct (sex), harassment]*

7.9 We find that the claimant’s maternity leave began on 21 May 2019. On 16 May 2019, the claimant wrote to Mr Smollen, who was the former deputy deputy head of QPSC,<sup>2</sup> and referred to a “long running issue” with Mr David Marston. She requested that she should not “report into David Marston during my time on maternity leave.”

7.10 Mr Smollen responded on 13 June 2019. He asked the claimant what she required him to do with the information, and whether it should be forwarded to HR as an official grievance. He confirmed that he would take over the keep in touch days during maternity leave.

7.11 In her submissions, the claimant changed the date from 2016 to 2019. She did not make any application to do so. The allegation as it relates to 2016 fails because it fails to identify what the request was, or in what manner it was ignored. No evidence was given.

7.12 To the extent this can be viewed as an allegation in relation to the events in 2019 leading up to her maternity leave, the claimant fails to establish that Mr Smollen ignored her request. He sought to engage with the claimant. The actual request was not to have contact with Mr Marston during maternity leave. That request was granted. In no sense whatsoever did Mr Smollen fail to deal with the claimant’s request. It was the claimant who failed to follow it up any further.

7.13 The claims of direct discrimination and harassment fail because the claimant fails to establish the alleged detrimental treatment occurred. Further, there are no facts from which we could conclude that the treatment was because of sex, or related to sex. There are no facts from which we could conclude it was the purpose to harass. It is possible the claimant believed that the effect was to harass. However, it is necessary to consider whether it was reasonable to have that effect, and given that Mr Smollen dealt with her request reasonably, and appropriately, it was not reasonable for it to have that effect.

*Allegation 2 – in 2016/2017 on a date unspecified by a person unspecified by failing to promote the claimant to an unspecified more senior role (i.e., band 8a or higher). [direct (race and religion), PTWR]*

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<sup>2</sup> Quality, patient and safety commissioning

- 7.14 In 2017, there was a large scale restructuring. The claimant's role ceased to exist. There was a process of matching roles, and the comparable role of deputy quality, patient safety and commissioning manager was identified. This continued as a band seven role. The claimant was not required to reapply and she was "slotted in," which was consistent with the approach for other comparable employees.
- 7.15 The process was governed by the organisational change policy. The policy itself was available to the claimant and all those affected. It contained relevant explanations, guidance, and a number of relevant definitions.
- 7.16 The process of "slotting in" is described at section 4.20. It is also referred to as "confirmed in post." The process followed is mapped and is set out at appendix 3. The process provided for a right of appeal. The claimant did not appeal.
- 7.17 The claimant did not apply for any specific role. She did not apply for promotion. Absent an application for promotion, there was no process available to the claimant, or any other employee, which would have allowed promotion by reason of the restructuring process.
- 7.18 Vacant deputy quality roles were filled following a competitive interview process, one person promoted was Ms Elizabeth Dailly who was promoted approximately one month after the claimant was slotted into her new role. Ms Priya Unjia followed the same processes as the claimant and was slotted into a deputy quality role. Later, following an unrelated application, she was promoted to a band 8a role.
- 7.19 In her submissions, the claimant makes extensive reference to documents contained in bundle B. We have considered those documents. We find they are of little, if any, relevance. The claimant's extensive submissions, in large part, appear to introduce new allegations and fresh evidence. The claimant's submissions make reference to Elizabeth Dailly acting up. However, allegation 2 is about failure to promote the claimant, rather than failing to give the claimant an opportunity to act up into a new role. The submissions also make reference to Miss Dailly receiving training.
- 7.20 We can only decide the pleaded allegations before us. The allegation is poorly particularised and fails to identify in what manner the respondent failed to promote the claimant. Viewed one way, it is possible to say that there is a factual basis for the allegation. The claimant was not promoted. Following restructuring she was slotted into a new, equivalent, role; in that context, it may be possible to say there was a failure to promote. However, we doubt that such an interpretation is sustainable. For there to be detrimental treatment, there must be an act or omission. As the claimant did not apply for a new role, we do not accept there was any refusal to promote which can be seen as detrimental treatment; there was no express refusal to promote. There was no refusal because there was

no application. It may be possible to say the allegation is put forward as an omission. If the allegation is advanced in that way, the claimant should give some evidence as to who should have acted and when. The reality is that any omission was caused by the failure to apply. In the circumstances we do not accept that the failure to promote the claimant was any form of detrimental treatment at all. In the absence of any application for promotion, we do not accept it could be treatment, either by way of act or omission.

- 7.21 In any event, the respondent's explanation is made out. The claimant was not promoted because she did not apply. There are no facts from which we could conclude this was because of race.
- 7.22 Harassment is not pleaded. In any event, there are no facts from which we could conclude that the purpose was to harass the claimant. Even if the claimant subjectively believed it was harassment, it is not reasonable for it have that effect. The treatment did not relate, in any manner at all, to race or religion.
- 7.23 Allegation 2 is advanced as less favourable treatment contrary to PTWR. The claimant must identify the comparator. It was agreed during the course of the hearing that no comparators have been identified. In her submissions the claimant refers to - Ms Dailly whom she appears to advance as a comparator. The comparison with Ms Dailly does not assist the claimant. Even if Ms Dailly could be a comparator for the purpose of regulation 2 PTWR, and this is not expressly addressed, it is necessary to consider the ground for the treatment, and this inevitably involves a consideration of all the material facts.
- 7.24 It is unlikely that an allegation of failure to promote someone who has not applied for promotion could be seen be seen as less favourable treatment than a person who has applied. Logically the comparison should be with a full-time employee who has also not applied, and in that case there would be no difference in treatment. Even if it could be seen as less favourable treatment, there are clear differences in the circumstances that explain the difference in treatment. During restructuring Ms Dailly was treated the same as the claimant. Promotion occurred following her application and competitive interview. In any event, both the application and the process of interview were circumstances relevant to the explanation. No treatment was on the ground of part-time work. The PTWR claim fails.
- 7.25 For completeness we also find that a comparison with Ms Pryia Unjia does not assist the claimant. She applied for promotion in a later competitive process, and was in a different position. She was not comparable. The difference in treatment is explained by her engagement with the competitive process.

*Allegation 3– since May 2018, at times and dates unspecified, in a manner unspecified, by Mr David Marston denying training (unspecified) to the claimant.*

*It being the claimant's statement that she has received no formal training and development since returning from maternity leave in 2020. [direct (race, sex), harassment]*

- 7.26 The respondent has a learning and development policy.
- 7.27 Paragraph 7.2 provides that "All agreed development activities should be in accordance with current and future organisational need."
- 7.28 Paragraphs 7.5 - 7.8.1, provide that if a development need cannot be met using existing sources, funding should be formally requested. Where the cost is below £500 the line manager may authorise the training. Where the cost is £500 or more, approval must come from the local director / national director.
- 7.29 Paragraph 7.10 provides that funding should not be provided for activities that do not link directly to a member of staff's current role or future career developments highlighted in their appraisal.
- 7.30 Paragraph 7.11 refers to a list of considerations that members of staff and managers should review before approval is provided. The list is at appendix 5. It includes reference to time commitment, the learning outcomes, whether it is at an appropriate level, and if there "is there a clear link between this requested activity and the aims and priorities of HEE".
- 7.31 It follows that expensive training programmes require application, justification, and approval.
- 7.32 In 2018, the claimant attended an appraisal meeting on 14 June 2018 and a further appraisal meeting on 9 October 2018. This led to 3 separate versions of her appraisal document. Mr Marston provided observations and commentary. His commentary was designed to help identify specific objectives which would assist her in any application for training. The claimant did not engage with this process.
- 7.33 The claimant did not make any specific business case and there was no formal request in any appraisal.
- 7.34 The claimant did complete a form requesting training and development. It concerned the Elizabeth Garrett Anderson programme, which the claimant wished to start in November 2018. The form lacked detail, particularly in relation to personal objectives, and it lacked detail of the length of study and the specific costs. The claimant did seek input from Mr Marston and he sought to assist; he indicated the need to provide relevant detail.
- 7.35 It is for the claimant to set out the detail of her allegation. The essence of the allegation is that she was denied training by Mr Marston. This implies that an application was made and a decision given, or in some other manner Mr Marston acted in a way so as to prevent training.



- 7.36 The claimant fails to set out the manner in which Mr Marston was said to have denied her training, and whether this was a direct action, and omission, or some form of deliberate blocking.
- 7.37 The reality is that the claimant has identified, in her evidence, two courses (albeit only the Elizabeth Garret Anderson course is suffcinty identified) both of which appear to be discretionary courses which need be fully justified in accordance with the policy we have outlined above. In no sense whatsoever does the documentation produced by the claimant demonstrate that she made any or any appropriate application supported by appropriate evidence.
- 7.38 Moreover, Mr Marston did not grant training because he never received an application concerning training which was within his authority to grant. It appears that both courses the claimant referred to would have been at a cost above that which could be authorised by Mr Marston.
- 7.39 It follows that the claimant has failed to establish her allegation that Mr Marston denied her training. He did not. This fails as a claim of direct discrimination because there was no detrimental treatment. This fails the claim of harassment because there is no treatment which could be harassment. To the extent it may be suggested that the allegation concerns the manner in which Mr Marston approached the claimant's enquiries about training, and in our view that would be stretching the parameters of this allegation unreasonably, it was not his purpose to harass. It was his purpose to advise and encourage. It cannot objectively be seen as harassment. In any event, there are no facts from which we could conclude that his conduct was either because of all related to race, religion, or sex.

*Allegation 4 - in August 2018 – on a date unspecified, by Mr David Marston becoming aggressive to the claimant, in a manner not specified, after the claimant told him she was going on holiday to Pakistan. [direct (race, religion), harassment]*

- 7.40 This allegation is poorly particularised. She fails to say how he became aggressive or when. The claimant has not adequately addressed the matter in her witness statement. She does say “David started to behave in a more aggressive way, when he asked me where I was going on holiday to, when I had told him, he became even more rude and aggressive, kicking me out of meetings full of internal and external colleagues.” We note that we deal with the allegation about being removed form a meeting as part of allegation 5.
- 7.41 Mr Marston attempted to address this allegation in his witness statement at paragraphs 43 to 46. Ultimately, he was speculating as to what the claimant might mean. He noted that the claimant did make a request to go to Pakistan in or around August 2018. That led to some relevant administrative issues. Holidays of over three weeks needed to be

approved at senior management level. He did not have access to the relevant system. The arrangements needed to be approved by his manager, Ms Frost, and ultimately final confirmation awaited her return.

- 7.42 The claimant seeks to deal with this in her submissions. Her submissions make accusations against one of the witnesses, Ms Cigdem, about Ms Cigdem's religious observance. The respondent takes issue with the relevance and appropriateness of these submissions. We find they are not relevant to this allegation. Her submissions also referred to Ms Ogunbiyi, but they are not relevant to this allegation. Finally, she refers to Mr Marston's alleged fantasies which are said to be illustrated by page 503 of bundle B. That document, which appears to be some form of fictional writing, was not put to him. It could have been put to him and we cannot find any fact in relation to it.
- 7.43 The claimant's submissions fail to specify the manner in which Mr Marston became aggressive. This allegation was put as direct discrimination and harassment. It cannot succeed as a claim of direct discrimination because the claimant has failed to establish any behaviour or conduct which we could find to be aggressive. For the same reason, it cannot succeed as a claim of harassment. The claimant has failed to identify or prove the alleged treatment which she cites as a claim of harassment. There is no basis on which we could find that it was his purpose to harass. There is no basis on which we could find that, considered objectively, any conduct should be seen as harassment. In any event, there are no facts from which we could conclude that any behaviour was either because of race or religion, or related to race or religion.

*Allegation 5 – on a date unspecified, by Mr David Marston 'kicking' the claimant out of a meeting and stating, "Samina you are not meant to be in this meeting, you need to leave now!" [direct (race, religion), harassment]*

- 7.44 Although not formally pleaded, pursuit of this allegation before the tribunal proceeded on the basis that it related to a first PB pilot delivery group meeting from 15 November 2018.
- 7.45 The claimant was not part of the pilot group. Any external attendees needed the permission of the chair. About twenty six minutes before the meeting was due to start, the claimant emailed Mr Marston. She had identified the meeting by looking at his diary. She had not been invited. She attended the meeting without approval.
- 7.46 Mr Marston has been involved in a previous meeting which overran. He arrived at the meeting and describes himself as flustered. He was surprised to see the claimant. He felt awkward. It was a small room and he asked the claimant to come out of the room. Outside the room, he explained that it was not a meeting she should attend. He confirmed they could discuss the matter later in the day. The claimant was not happy with this decision.

- 7.47 The allegation is that he used the following words, "Samina you are not meant to be in this meeting, you need to leave now!" The reference to kicking her out would suggest that his manner is also said to be part of the discrimination or harassment.
- 7.48 We find he did not use those words. The incident led to an email exchange. The claimant's email of 15 November 2018 at 12:20 states he used the following words, "Which meeting do you think you are at Samina?" The email does not suggest that he shouted at. Her contemporaneous account is materially different to that which was given to the tribunal. Her evidence to the tribunal was that she was scared of Mr Marston or that she was trying to be diplomatic. Mr Marston's contemporaneous response to the claimant's email is consistent with the evidence he gave the tribunal. We do not accept the claimant's suggestion that he was merely trying to cover up his behaviour. On the balance of probability, we find that the words used were those recorded in the claimant's email.
- 7.49 The allegation cannot succeed on the basis of the words alleged either as an act of direct discrimination or harassment, as those words were not used.
- 7.50 When we find that some other words were used, as we have here, it may be inappropriate to substitute those for the original allegation. However, this allegation does, in our view, go further than the actual words used and extends to the manner of delivery.
- 7.51 We find there are no facts from which we could conclude that his manner was because of the claimant's race or religion. We accept his explanation which is that when he arrived he was mildly flustered, as he was running late and had not read all the papers. On seeing the claimant, he thought he was in a different CYP meeting which he had forgotten and for which he felt unprepared. When the nature of the meeting was clarified, he was surprised to see the claimant in attendance and considered she may have made a mistake. He asked her to leave the meeting so he could explain. We accept his evidence that this was an attempt to be diplomatic. In no sense whatsoever was his action because of race or religion.
- 7.52 As for harassment, we do not accept there is any fact from which we could find that his purpose was to harass. The explanation set out above explained his purpose.
- 7.53 We have no doubt that his action was unwelcome and the question arises as to whether it had the effect of harassing the claimant. Given her negative reaction, we accept that she felt uncomfortable and aggrieved. However, the conduct must violate dignity or create an intimidating, hostile, degrading, humiliating or offensive environment. Those are strong words. Explaining to someone they are in the wrong meeting is unlikely to constitute harassment. An excessively overbearing manner could be upsetting, but he was not overbearing, and was reasonably diplomatic. We must consider all the circumstances of the case and whether it is

reasonable for the conduct of had that effect. We find it is not reasonable for it to have had that effect.

- 7.54 Finally, when considering harassment, the conduct must be related to the relevant protected characteristic. When considering this, we must have account of all the circumstances and the claimant may be assisted by the reverse burden. Ultimately, we find that Mr Marston's explanation, as set out in relation to direct discrimination, demonstrates his conduct was related to finding the claimant in the wrong meeting and his being slightly flustered. It was not related to her race, sex, or her religion. This claim fails.

*Allegation 6 – in October 2018, on a date or dates unspecified, by the respondent through a person not specified, not allowing the claimant to sit with the rest of her team. [direct (race)]*

- 7.55 The claimant fails to particularise this allegation. If it is the action of Mr Marston she had in mind, she could have applied to amend to make that clear. Moreover, she fails to give the dates when she was not allowed to sit with the team, or explain when she made a request to sit with the team, or explain who refused any requests or failed to allow her to sit with the team.
- 7.56 The reality is that the seating arrangements changed on multiple occasions. The bundle of documents contains at least three references to different seating arrangements.
- 7.57 The claimant fails to address the allegation in her witness statement. The contemporaneous documentation demonstrates the approach to seating arrangements. For example, correspondence between the claimant and Ms Christina Mottes demonstrates that the plan was agreed at a senior level. (See for example the email for October 2018 page 119.) It was open to the claimant to complain or to discuss the matter with Mr Marston as her line manager. There is no evidence that she did discuss it with him or make any request for change which was refused.
- 7.58 The claimant's evidence fails to demonstrate that she was not allowed, at any time, to sit with the remainder of her team. Even when she was not directly sitting opposite a member of her team, she was within a few yards of the team members.
- 7.59 The allegation would suggest she made some form of request. Her evidence falls short of demonstrating a specific request to move which was either ignored or refused.
- 7.60 There is no fact from which we could conclude that any seating arrangement at any time was because of race. Further to the extent it may be suggested that this allegation is really about harassment. There is no fact from which we could conclude that the arrangements were made

because of or related to any protected characteristic, and in no sense at all was it a violation of dignity or any other form of harassment.

*Allegation 7 – around 2019, on a date unspecified, but shortly before the claimant was due to go on maternity leave, by Mr David Marston telling the claimant she was mad for having more children. [harassment]*

- 7.61 The claimant's evidence on this was poor. Mr Marston's evidence was that there was a similar comment made when he gave a short speech and presentation acknowledging the claimant was about to depart on maternity leave.
- 7.62 During cross examination, the claimant was invited to accept that the comment was made during the leaving speech, but she chose not to accept this, instead she stated that Mr Marston randomly said such things across the room. In her witness evidence, she states that the day before she left on maternity leave, Mr Marston stood up and said "You are mad for having more kids."
- 7.63 There is no witness who supports the claimant's version. On the balance of probability, we accept that Mr Marston was giving a short speech wishing the claimant well and acknowledging she was about to go on maternity leave. We accept his evidence, which is to the effect that at the time he had two young children, one of whom had just turned one, and he was struggling with childcare. In that context, he did make reference to the fact that having more children sounded like madness. He described it as "a bad joke at my own expense."
- 7.64 It is common for there to be work presentations for individuals who are leaving for a break. Short speeches may be given when somebody goes on maternity leave or they leave for another reasons, such as going to a new job. There may be a presentation of a card or a gift. It is common in such situations for there to be attempts at levity and light-heartedness.
- 7.65 We do not accept the claimant's evidence that in some manner this comment was random and not part of a general leaving speech.
- 7.66 This allegation is put as one of harassment. There are no facts from which we could find that it was his intention to harass. We accept that his comment was meant to be a joke, particularly given it was put in the context of describing her as an excellent mother. We accept that the conduct was unwanted, but we don't accept that Mr Marston could have known that. The claimant's finding Mr Marston's conduct unwelcome did not arise from Mr Marston's conduct on that occasion. At the time he did not know the claimant viewed him in a seriously negative light. Had he known that, he may have trod more cautiously. His conduct was unwanted because she viewed his conduct, generally, as unwanted, even conduct which was objectively reasonable and justified.

7.67 In this context, we must consider the effect of the conduct and whether it was reasonable to have the effect of harassment. It was not. This was a well meant comment, which was essentially innocuous. Even if it was not the most successful attempt at humour, it was obviously a joke made at his own expense, and in support of his general assertion the claimant was an excellent mother.

7.68 In any event, we do not accept this related to a protected characteristic, whether race, religion or sex. It related to a general rueful, but warm, view of the difficulties of parenting. Those difficulties may be felt by all, regardless of race, religion, or sex. It was essentially an inclusive comment.

7.69 To the extent that it may be said that it relates to a protected characteristic, we observe that it is not all references, particularly transient references, to protected characteristic which will lead to liability for harassment.

*Allegation 9 - since August 2020, on dates unspecified, by Mr David Marston excluding the claimant, in a manner unspecified, from emails and updates on work streams, being which the claimant needed to know. [direct (race, religion) harassment, PTWR]*

*Allegation 10 – since August 2020, on dates unspecified, by Mr David Marston allowing the claimant to attend unspecified WorkStream meetings with no knowledge of updates to feedback. [direct (race, religion) harassment, PTWR]*

*Allegation 11 – since August 2020, on dates unspecified, by Mr David Marston delegating “a lot of work to the claimant, without continuous involvement in the work or knowledge in the handover.” [PTWR]*

*Allegation 12 – since August 2020, on dates unspecified, by Mr David Marston failing to copy the claimant into unspecified emails and keep the claimant “up-to-date with regards to midwifery meetings.” [PTWR]*

7.70 We can consider these allegations together. They lack specific allegations and all are largely concerned with the same broad themes. The allegations against Mr Marston are general and include the following: excluding the claimant from emails and updates on workstreams; allowing her to attend workstream meetings with no specific updates; delegating work inappropriately without his remaining continually involved; and failing to copy the claimant into emails concerning midwifery meetings.

7.71 Mr Marston provided evidence to the respondent’s external investigation. He provided screenshots of six different weeks demonstrating all the meetings he had attended with the claimant. He copied the claimant into 208 emails regarding the midwifery expansion workstream. His evidence was this demonstrated the appropriateness of his approach. He was not challenged on this during cross examination.

- 7.72 The claimant gave evidence that he was “very tactical on what emails he did not include.” The claimant failed to identify any email that should have been sent, but which was withheld. The claimant’s has given no credible evidence of any meeting from which she was excluded.
- 7.73 The claimant was a senior manager and her work was largely autonomous. Mr Marston had an overview of the work. The allegations suggests the claimant had an expectation that Mr Marston’s involvement would be significant and continuous. That was an unrealistic expectation. That was not Mr Marston’s role.
- 7.74 Allegation 9 is concerned with an alleged exclusion of the claimant from emails, updates, and workstreams. The claimant fails to establish that she was excluded in any manner. In her submissions she refers to meetings at pages 873 and 874 of the bundle. She refers to Mr Marston’s “limited attendance” she says Mr Marston “relied” on the claimant to present data and alleges this was an attempt to sabotage her. She also refers to page 875. Page 875 includes an email from the claimant of 30 January 2023 to Jackie Brocklehurst which states the following:
- Please see below. David faking standing me down from the Maternity meeting for other reasons to cover his back on emails, when I announced I would on 13th Jan and had discussed it with him in December, see draft emails still in my inbox.**
- 7.75 This is another unparticularised allegation. It also demonstrates that the claimant may have had in mind specific meetings. However, to the if she had specific meetings in mind, she failed to plead them, and therefore failed to give the respondent any opportunity to deal with them. If the claimant wished to rely on specific meetings, it would be necessary to amend, she has failed to do so.
- 7.76 In any event, the evidence as presented, even in submissions, falls far short of establishing any detrimental treatment by Mr Marston. The claimant fails to prove any treatment which could be seen as potentially detrimental. There is nothing which suggest any treatment was because of a protected characteristic. There is no fact from which we could conclude the purpose was to harass.
- 7.77 Allegations 9 – 12 are also said to be less favourable treatment contrary to PTWR and we will summarise the position below.
- 7.78 Allegation 10 adds no detail to allegation nine and fails for the same reasons.
- 7.79 Allegation 11 makes general assertions about the delegation of work. In the submissions, the claimant refers to paragraph 8.7A of the amended particulars, and makes various references to bundle B. The claimant fails to identify any relevant treatment.

- 7.80 Paragraph 8.7A identifies no allegation of detrimental treatment. The claimant's submissions suggest that her concern revolved around allocating histopathology funding and who had responsibility for the workstream. The claimant fails to adequately identify any detrimental treatment. There are no facts from which we can conclude that any treatment was because of any protected characteristic, or the intent was to harass. The treatment could not reasonably be said to harass.
- 7.81 Allegation 12 is a further allegation which alleges failure to include the claimant in emails. No email is identified. In her submissions, the claimant refers to page 822 of the bundle, which is a witness statement of Faizun Nahar. The statement does not identify any specific emails. The statement makes allegations against Mr Marston that appear to be based entirely on hearsay evidence. The statement does not assist. The claimant fails to identify any treatment which could be capable of being direct discrimination or harassment.
- 7.82 As noted, allegations 9 – 12 are all put as less favourable treatment contrary to the PTWR. In each case, there is a failure to identify the treatment. In each case, there is a failure to identify the appropriate comparator. No comparator is pleaded. No comparator is identified or dealt with in the submissions. Absent any treatment, and absent any comparator, the claim less of favourable treatment contrary to the PTWR fails.

*Paragraph 8.7A - There is reference to Mr David Marston incorrectly allocating histopathology funding. It is unclear what, if anything, is said to be the allegation. [direct (race, religion)]*

- 7.83 This paragraph fails to identify any detrimental treatment at all. It refers to Mr Marston incorrectly allocating histopathology funding. The claimant makes reference to bundle B and also page 284 of the main bundle. Her submissions refer to paragraph 92 - 93 of Mr Marston's statement.
- 7.84 In 2020 – 2021, histopathology payments went to 18 NHS trusts automatically. The claimant was to lead on the histopathology work. As the deadline approached for quarter three, Mr Marston asked the claimant to submit records. Information was copied from the claimant's spreadsheet. There may have been an error, Mr Marston could not recall. He believes any error was minor and was fixed. It is his evidence that such errors were common and routine and presented no difficulty. It follows he accepted that there may have been an error when copying information, and the error needed to be amended. It remains unclear what the claimant considers to be the detrimental treatment. She identifies no facts from which we could conclude any treatment was because of a protected characteristic. The allegation fails.

*Allegation 13 – in late 2020, following the claimant return from leave, on a date unspecified, by Mr David Marston blaming the claimant for sending out late histopathology letters relating to agreements. [direct (race religion)]*



- 7.85 The claimant produced no evidence, save for asserting the bare allegation in her witness statement.
- 7.86 Mr Marston explained that ahead of money being remitted to NHS Trusts, letters would be sent. The letters had been on the claimant's to do list for several weeks, but she had not sent them. The claimant was due to be absent, we presume on holiday, and Mr Marston agreed to send the letters. Unfortunately, he was busy during that period, and eventually the letters were sent out by the claimant when she returned. Sending the letters was the claimant's responsibility, even if Mr Marston had offered to assist her.
- 7.87 The claimant fails to establish what she means by blame. When we consider the circumstances as a whole, we find this is a minor point of detail in relation to their respective workloads. There is no evidence Mr Marston took any specific negative view. There are no facts from which we could find this treatment was because of any protected characteristic. This claim of direct discrimination fails.

*Allegation 14 – on a date unspecified, possibly in 2020, by Mr David Marston failing to tell the claimant there was a further £72,000 to be allocated and then complaining, in a manner unspecified, the claimant had allocated an extra £72,000. [direct (race, religion)]*

- 7.88 This allegation is poorly particularised and difficult to understand. In her submissions, the claimant refers to pages 356 and 357 of the bundle and to paragraph 96 of Mr Marston's statement. The emails on those pages do nothing to clarify the position. Mr Marston states that he does not understand the allegation. The claimant was leading on the programme. She knew the budget. He speculates that there may have been a £72,000 shortfall because of an error in the spreadsheet formula. He accepts that this may have been a mistake, and describe such errors as routine and considers that it would be a relatively small sum when the budget was £430 million. In support of his general point that the error was minor and could be routinely addressed, he points to the lack of contemporaneous documentation.
- 7.89 Broadly, it was not Mr Marston's responsibility to tell the claimant that there was a failure to allocate budget. The budget was within her remit. The claimant fails to identify any treatment by Mr Marston which could be said to be "complaining." Further, there is no fact from which we could conclude that the treatment was because of a protected characteristic

*Allegation 15 – in December 2021, on a date unspecified, following the claimant's request to work more days, on a date or manner unspecified, ignoring the request. [PTWR]*

- 7.90 The claimant's allegation fails to identify any request to work more days, or state who, if anyone, failed to deal with the request, or refused it. The

claimant does not deal with it in her evidence adequately or at all. In her submissions she refers to correspondence with the external investigator.

- 7.91 It is for the claimant to set out her claim. The respondent should not be expected to attempt to identify any occasion when the claimant may have requested more days and then give evidence in relation to it. The claimant must identify when she made the request, and in what manner she says it was not dealt with. She has failed to do so and this allegation fails.
- 7.92 Mr Marston's evidence is that if the request had been made, he would have referred the claimant to the relevant policy. Any request would be pursued under that policy. The claimant could easily have found the policy.
- 7.93 There is no evidence from which we could conclude that the alleged treatment occurred.
- 7.94 In any event, this is put an allegation of less favourable treatment contrary to PTWR. The claimant is required to identify a comparator. No comparator is identified in the claim form. No comparator is identified in the submissions.

*Allegation 16 – in December 2021, on a date unspecified, by Mr David Marston stating the claimant was not allowed to do a postgraduate degree and stating “How can a mother do a master’s degree?”, And by comparing the claimant to a male colleague, Mr Rishi Athwal by saying “Your male colleague, Rishi Athwal, was able to do a master’s degree as he is younger than you, single and does not have a kid.” [direct (sex), harassment, PTWR]*

- 7.95 This allegation overlaps with allegation three. For the reasons already set out, we do not accept that Mr Marston prevented the claimant from undertaking a postgraduate degree. We do not accept that Mr Marston stated the claimant could not undertake the degree. This is inherently unlikely; it was not in his gift. Had he made such a statement, it is likely there would have been clear documentary evidence.
- 7.96 We find the Mr Marston did not say either, “How can a mother do a master’s degree?” or, “Your male colleague, Rishi Athwal, was able to do a master’s degree as he is younger than you, single and does not have a kid.” In her submission, the claimant points to no evidence that either comment was made. Her case is supported only by her bare assertion.
- 7.97 The words attributed to Mr Marston are offensive and inappropriate. Had he said them, we find on the balance of probability there would have been some contemporaneous documentation by way of a complaint by the claimant or other supporting documentation.
- 7.98 It follows that the claimant fails to establish the treatment occurred. As the treatment did not occur, it cannot be a detriment for the purposes of direct

discrimination. It cannot be harassment. It cannot be less favourable treatment contrary to PTWR.

7.99 We should also note the claimant has failed to identify any comparator for the purposes of PTWR.

*Allegation 17 – in January 2022, following the claimant’s request for project management training (the request not being specified), by Mr David Marston making it “difficult for the claimant to complete the training” including requesting the claimant complete an online taster first. [direct (race), harassment]*

7.100 This allegation is not addressed in the claimant’s witness statement. The claimant fails to explain in what manner Mr Marston made it difficult for her to complete the training. In her submissions, the claimant states Mr Marston said “in his opinion that it would be more useful for the claimant to do a taster course.”

7.101 The project management training was structured and included an initial taster session. Undertaking the taster session would not preclude an individual from continuing with the training, nor was it a prerequisite.

7.102 Suggesting that undertaking the taster session, in circumstances where the claimant had not previously undertaken such training, was a reasonable and helpful suggestion, and one which the claimant was free to accept or reject. It was not a paid for course. Undertaking the course did not require Mr Marston’s permission.

7.103 In no sense whatsoever did Mr Marston make it difficult for the claimant to complete the training.

7.104 The treatment has not been made out. There is no fact from which we could conclude that any treatment was because of a protected characteristic. There is no fact from which we could conclude it was the intention to harass. It would not be reasonable to consider this interaction to be one of harassment. The treatment was not related to any protected characteristic. The allegation fails.

*Allegation 18 – in January 2022, by Mr David Marston, in a manner unspecified, making allegations that the claimant had not allocated funding in time to WorkStream (unspecified). Thereafter, using the expression “There is no skin off our nose if the money was not spent.” Thereafter, removing the claimant from the work stream “behind her back.” [direct (sex), harassment]*

7.105 The claimant has failed to fully particularise this allegation. The claimant’s witness statement suggests that the comment was made in relation to the failure to allocate £72,000 (see allegation 14 above).

- 7.106 Mr Marston states that he has no recollection of using the term “no skin off our nose.” However, he accepts that if funding had not been allocated, the funding would simply go back to the Treasury, and he may have said something similar by way of reassurance.
- 7.107 In her witness statement, the claimant appears to allege that, in some manner, Mr Marston was seeking to prevent her from allocating the funding. However, that is not the allegation pleaded.
- 7.108 We accepts that Mr Marston may have used words similar to those quoted by the claimant. We do not accept that the treatment is detrimental in any manner. The words would be consistent with Mr Marston seeking to reassure the claimant that there was no specific difficulty. There is no fact from which we could conclude that the words were used because of a protected characteristic. The explanation is clear and is an answer to the claim of discrimination. This was not a significant issue. If funds were not allocated, there would be no harm. The funds would be returned. There are no facts from which we could conclude that the purpose was to discriminate. It would not be reasonable to conclude the treatment had the effect of harassment. The treatment did not relate to a protected characteristic.
- 7.109 The claimant referred to the evidence of Dr Young. His evidence does not assist and contains speculation.
- 7.110 What is meant by the removal from the work stream is not adequately explained, nor what is meant by being behind her back. The suggestion that any changes were at the behest of Mr Marston is not supported by any credible evidence. The workstream was moved, but that was part of a larger process for which Mr Marston was not responsible. The claimant fails to establish Mr Marston was in anyway responsible.

*Allegation 19 – in January 2022, in a manner unspecified, by Mr David Marston and Mr Stanley Babukutty telling the claimant not to attend a best place to work – change hub meeting (date unspecified). [direct (race, sex), harassment]*

- 7.111 The claimant fails to identify, in the allegation, when or how she was told by Mr Marston and Mr Stanley Babukutty not to attend the meeting. In her witness evidence, she confirms that she did attend a best place to work – change hub meeting on 11 January 2022. She asserts that Mr Marston and Mr Stanley Babukutty told her not to attend and started to “pick on” her diary in front of the entire team. She fails to say when that was, or identify who was involved.
- 7.112 The claimant received an invitation, along with many others, on 13 January 2022 to attend a change hub meeting. It appears Mr Marston was not included. Mr Stanley Babukutty was included.
- 7.113 Mr Marston understands the claimant compares herself to Ms Clay. We heard from Ms Clay. Ms Clay had no recollection of the claimant being

reprimanded in any meeting. We find on the balance of probability that had the claimant been mistreated in a meeting, Ms Clay would have remembered. However, it is difficult to be definitive because the claimant does not identify the relevant meeting.

7.114 We find the claimant fails to prove that the treatment occurred. As the treatment did not occur, it cannot be direct discrimination or harassment. The reality is the claimant was free to attend the meeting.

*Allegation 20 – around January 2022, on a date unspecified, by Mr David Marston telling the claimant that “she should stop supporting a female professor, Prof Elizabeth Hughes.” [direct, (sex), harassment]*

7.115 Prof Elizabeth Hughes was the national deputy medical director, and a very senior manager. She had overall responsibility for the histopathology work. The claimant did not work directly for Prof Hughes.

7.116 In her evidence, the claimant alleges that Mr Marston became aggressive and stated she should not be supporting Prof Hughes. The claimant points to no email, or other contemporaneous documents, in support.

7.117 Mr Marston states that the claimant approached him and stated that Prof Hughes was requesting her to undertake work which did not fall within the QPSC team remit. Mr Marston alleges he offered to speak to Prof Hughes to ensure that the work was picked up by colleagues. He denies telling the claimant to stop working with Prof Hughes.

7.118 On the balance of probability, we find had Mr Marston told the claimant to stop working for Prof Hughes in a manner which the claimant found inappropriate, there would have been some evidence by way of email or otherwise. We have preferred Mr Marston’s evidence. He did not tell the claimant to stop supporting Prof Hughes. Instead, he had a discussion with the claimant when the claimant raised concerns. He offered to support the claimant. The treatment as alleged by the claimant is not made out. As the treatment is not made out, the allegation cannot succeed as an act of direct discrimination or harassment. In any event there was no fact from which we could find the treatment was either because of or was related to any protected characteristic. We accept Mr Marston’s explanation, which was that he had a discussion with the claimant when she raised concerns and he offered to assist. That was an appropriate managerial response.

*Allegation 21 – in January 2022, on a date unspecified, in a manner unspecified, by Mr David Marston and Mr Stanley Babukutty denying the claimant education contract training due to take place in the 24 and 26 January 2022, it being the claimant’s case the course was booked on the claimant’s non-working day. [PTWR]*

- 7.119 This allegation appears to proceed on the premise that there was some form of formal training provided on a group basis, but from which the claimant was excluded, as it occurred on days when she did not work.
- 7.120 The claimant fails to identify when the alleged training took place. We accept the evidence of Mr Babukutty provided information to colleagues on the new education contract. He met individually with those who needed training. On 25 January 2022, by email, the claimant asked him if there was any additional guidance or procedure documents relating to the education contract. He responded by email confirming that he was happy to meet with the claimant and he suggested times when they could do so. It follows that the claimant was not in any manner whatsoever excluded from training.
- 7.121 The claimant did meet with Mr Babukutty. During cross examination she suggested that, despite meeting with him, she received no training. We do not accept that evidence. We find that training was provided.
- 7.122 This is put as an allegation of less favourable treatment contrary to PTWR. The claimant fails to identify any comparator. There is no evidence that any full-time employee was treated materially differently to the claimant. The fact that training may have been provided at different times is not material when the training was provided individually. The claimant was given the same material access to training. No treatment was on the ground of part-time work.

*Allegation 22 – between January 2022, and March 2022, following complaints (unspecified) made to Ms Lynda Frost about alleged bullying and harassment from David Marston, by Ms Lynda Frost ignoring the claimant’s complaints and concerns. [direct (race, religion)]*

- 7.123 The claimant fails to particularise this allegation. She fails to point to contemporaneous documentary evidence, save for an email 22 February 2022 which we will deal with later. No specific complaints were identified in cross examination.
- 7.124 Ms Frost’s evidence was that the claimant did not raise concerns verbally during this period. It may be argued that the email of 22 February 2022 was a complaint about Mr Marston. However, as we will explore under allegation 27, in no sense was the email ignored. We find no complaints were made to Ms Frost which were ignored. As no complaints were ignored, the treatment is not made out and it cannot be direct discrimination.
- 7.125 The claimant’s submissions refer to documents, including Teams chats, but they do not support the claimant’s allegation.

*Allegation 23 – in February 2022, on a date unspecified, by Mr David Marston, and Mr Stanley Babukutty, at a risk management meeting, insulting and reprimanding the claimant for attending. [direct (race), harassment]*

7.126 The allegation fails to identify, adequately, the relevant meeting. It appears this complaint forms part of the claimant's grievance which was investigated. During the investigation conducted by Ms Sarah Byrne, Ms Cristina Mottes was interviewed on 21 October 2022 and was asked about the meeting. The notes record Ms Mottes confirmed the training was advertised. Anyone was able to sign up. She denied having any recollection of the claimant being spoken to in a way that was inappropriate. In cross-examination, the claimant suggest Ms Mottes was lying about this. We did not hear from Ms Mottes, who was not called to give evidence, and we accept that the reference in the investigation is hearsay. However, we have no reason to believe the note of her response is inaccurate, or that Ms Mottes was seeking to mislead. The claimant fails to prove that the treatment occurred. She was not treated in a way which was insulting. She was not reprimanded.

7.127 As the treatment did not occur, it cannot be detrimental treatment for the purposes of direct discrimination and it cannot be harassment.

*Allegation 24 – in February 2022, on a date unspecified, in a manner unspecified, by Ms Lynda Frost denying the claimant bereavement leave. It being the claimant's case leave was granted to Priya Unjia. [direct (religion), harassment, PTWR]*

7.128 This allegation is not addressed in the claimant's witness statement. She accepted in cross-examination, that she never requested bereavement leave. We find the claimant did not get bereavement leave because she did not ask for it. The claimant did send an email to Ms Frost on 22 February 2022. It refers to her suffering another bereavement in the last three months, but does not request bereavement leave.

7.129 It may be arguable this is an allegation where the claimant has cited a comparator, Ms Unjia. We accept Ms Unjia's evidence. The respondent has a clear bereavement policy which can be accessed by all employees. Ms Unjia did request bereavement leave, which was granted.

7.130 In this case, the relevant circumstance is that Ms Unjia requested bereavement leave, and the claimant did not. In no sense whatsoever was any treatment of the claimant on the grounds of part-time work. The PTWR claim fails.

7.131 It follows that because the claimant was not denied bereavement leave, the claim cannot succeed as an allegation of direct discrimination or harassment.

*Allegation 25 – between December 2021 and March 2022, on dates and occasions unspecified, asking the claimant to inform Ms Lynda Frost what the claimant "had done in the last three months." [direct (race, religion, sex), harassment]*

7.132 On 10 February 2022, Mr Marston did write to the claimant referring to what she had done in the last three months. He did not use the exact words as alleged. He said the following:

**You were going to produce a work plan for the three projects you've got at the moment... In order for us to assess the feasibility of releasing you for up to 30% of your working time to undertake the programme.**

7.133 In her evidence, she also refers to the email 11 February 2022, page 401. This states:

**... I appreciate that much of the three workstreams in question are led outside of QPSC and so you have limited knowledge on what's upcoming – Lynda and I might need to help you get more information out of the programme leads; for resource planning purposes, expecting you to just react at short notice isn't really fair.**

**As a proxy, can you please outline what you've been doing over the past 3 months in each space, and an estimate of time spent accordingly. Ideally, I think this should be in a workplan format, ie with time against specific activities...**

7.134 The background is that these exchanges occurred in the context of the claimant's wish to undertake the Edward Jenner programme. Undertaking this programme would have led to the claimant being released for 30% of her working time. The learning and development policy required Mr Marston to consider the time commitment and how that would affect her work commitments. The claimant agreed, in her evidence that this was an essential part of Mr Marston's managerial function.

7.135 Mr Marston recognised in his email of 11 February 2022 that her time commitment was influenced by three workstreams which were outside QPSC and the claimant could not know what was the upcoming commitment. He offered, with Ms Frost, to get more information from the various programme leads in order to consider resource planning. He stated, "expecting you to just react at short notice isn't really fair."

7.136 Mr Marston suggested that information about the previous three months' work may provide evidence about future commitment. In that context he stated, "As a proxy, can you please outline what you've been doing over the past three months in each space, and an estimate of time spent accordingly."

7.137 We find that on 10 February, Mr Marston did write to the claimant requesting information about the last three months' work. He did so because this was a legitimate and reasonable part of his managerial function. It was necessary to ask the question because an assessment needed to be made of the impact which may be caused by the claimant's request to undertake the programme.

7.138 Mr Marston's explanation is established. He was simply seeking information about the impact, which was a necessary prerequisite to



further consideration of the claimant's request. In no sense whatsoever was this because of any protected characteristic. In no sense whatsoever was his purpose to harass. Mr Marston was being helpful to the claimant in seeking to progress her request. It is not reasonable for the treatment of have had the effect of harassing. In any event, it was neither because of a protected characteristic or related to a protected characteristic. It follows claims of direct discrimination and harassment fail.

*Allegation 26 – on dates, and times unspecified, but on “regular basis”, by Mr David Marston shouting at the claimant. It being the claimant's case that in December 2021 David Marston asked the claimant what she had done over the three weeks while she was on leave and thereby telling her off. [direct (race, religion, sex), harassment]*

7.139 We find there is no contemporaneous evidence in support of the allegation that Mr Marston shouted at the claimant's whether on a regular basis or otherwise. The claimant's evidence on this was unconvincing. A number of witnesses were asked whether they had heard Mr Marston shout at the claimant. All witnesses who were asked denied ever witnessing Mr Marston shouting at the claimant. We find that the claimant has failed to prove the alleged treatment occurred. As the treatment is not proven, it cannot be direct discrimination and it cannot be harassment.

*Allegation 27 - on 22 February 22, the claimant wrote to Ms Lynda Frost making allegations against Mr David Marston, and by Ms Lynda Frost responding, on a date and in the manner unspecified, that “she did not know what the claimant wanted her to do.” [direct, (race, religion, sex), harassment]*

7.140 On 22 February 2022, the claimant wrote to Ms Lynda Frost and made allegations against Mr Marston. The claimant's email said “Please treat as private and confidential.” She did not ask for it to be passed to HR.

7.141 Ms Frost replied on the same day. The email sought to reassure the claimant. Ms Frost stated she did not believe that Mr Marston was attempting to micromanage the claimant. She went on to say:

**I am happy to talk to David and/or yourself if that would help, however I'm not entirely sure I know from your email about what you would like from want from me at this stage – please do let me know so I can support you.**

7.142 The claimant's allegation does not set out accurately what was said to her. It follows that the treatment is not made out.

7.143 It would be fair to say that Ms Frost did seek clarification as to what the claimant would like her to do. Ms Frost's explanation for this is that she had been asked to keep the information private and confidential. It had not been put as a formal grievance. Ms Frost wished to clarify what the claimant intended, and Ms Frost asked the claimant to clarify how she could further support her.

7.144 Ms Frost had not previously been aware of the claimant's difficulty with Mr Marston. Ms Frost was concerned for the claimant's well-being. On 3

March 2022, when the claimant returned to work, the claimant asked Ms Frost to discuss the matter further. Ms Frost replied within 10 minutes explaining that she was on holiday. There was a further attempt to meet with the claimant, but on the next working day, 8 March, the claimant was unwell due to stress. She has been on long-term sick leave since 7 March 2022. Ultimately, no meeting took place. However, we are satisfied that Ms Frost took all reasonable steps to meet with the claimant.

7.145 The allegation, viewed in a general way, appears to be that Ms Frost failed to respond adequately or at all. That allegation is unsustainable. Ms Frost adopted a reasonable approach. The treatment was not detrimental. It was not because of or related to any protected characteristic. The purpose was not to harass. It could not reasonably be seen as harassment.

*Allegation 28 – on 3 March 2022, by Lynda Frost not permitting the claimant to attend a digital champion meeting, and by asking her to discuss the matter with Mr David Marston. [direct (race, religion), harassment]*

*Allegation 29 – on 3 March 2022, following the claimant’s request for flexible working made to Lynda Frost, being a request to enable her to attend a digital first meeting, by Ms Lynda Frost pushing the claimant back in a manner unspecified. [allegation not specified as any type of discrimination]*

7.146 These allegations can, conveniently, be dealt with together. They appear to refer to the same email exchange.

7.147 On 3 March 2022, the claimant sent an email to Ms Frost which stated, “I wonder if I can please have your support in allowing me to work more flexibly. This will also help me to attend meetings and conduct various works relating to the digital first programme.”

7.148 Ms Frost responded on 3 March 2022 and apologised as she was on annual leave. Ms Frost suggested that she, the claimant, and Mr Marston sit down and work through what was required. She stated “I don’t see a problem but will review when I am back in.”

7.149 On 8 March, the claimant was ill. As she went off work, the claimant never discussed the matter further with Ms Frost.

7.150 The allegation the claimant was prevented from attending a digital champion meeting is not made out. The treatment did not occur. Ms Frost did not push the claimant back to Mr Marston, albeit she suggested Mr Marston should remain involved; the claimant does not appear to have objected to this approach. She confirmed that in principle there would not be a difficulty. It was reasonable to include Mr Marston as the claimant’s line manager.

- 7.151 The claimant has failed to say what type of discrimination is alleged for allegation 29. We will assume it is put as direct discrimination and harassment.
- 7.152 To the extent it can be said that the treatment constituting allegations 28 and 29 occurred at all, the respondent has given a clear explanation. That explanation is an answer to any claim of direct discrimination. It is an answer to any claim of harassment. Further, in no sense whatsoever was the treatment because of or related to any protected characteristic.

*Allegation 30 – In May 2022, on a date unspecified, the claimant complained, in a manner unspecified, to Ms Sharon Ogunbiyi, but being asked to return to her manager, Mr David Marston, to resolve her concerns. The complaint appearing to be the action of Ms Ogunbiyi. [harassment]*

- 7.153 During cross-examination, the claimant stated, when being questioned about allegation 31, that she was not bringing a claim against Ms Joyce Antubam. Her answer also referred to Ms Ogunbiyi. It is arguable that her claims against both were withdrawn at that point. This was raised at the time. However, as we have heard the evidence, we will consider the merits of the claims.
- 7.154 The claimant does not deal with allegation 30 in her witness statement. The claimant first made a complaint to Ms Ogunbiyi on 17 February 2022. She spoke to her on 3 March 2022. The claimant's email of 17 February 22 stated it was private and confidential and said, "Can I please meet with you sometime next week to talk to you confidentially about my issues, historical and current with my line-manager and also belittling and aggression I'm getting from the team now to through him?"
- 7.155 The complaint is not about the subsequent correspondence around February 2022. The complaint appears to be about action in May 2022. This appears to be limited to Ms Ogunbiyi's email of 17 May 2022. This confirmed that the claimant's line manager had been changed to Ms Antubam. The allegation concerns the claimant being asked to return to Mr Marston as her line manager. It suggests this occurred in May 2022. The claimant fails to establish the treatment. She was not required to return to Mr Marston. She was given a new line-manager, Ms Antubam. This evidenced by the email, from Ms Ogunbiyi, of 17 May 2022
- 7.156 As the treatment is not made out, the claim of harassment must fail. The treatment did not occur. More generally, Ms Ogunbiyi's conduct did not have the purpose and cannot reasonably be said to have had the effect of harassing the claimant. It was not related to any protected characteristic.

*Allegation 31 – since 1 June 2022, by Ms Joyce Antubam, by email, on dates unspecified, sending requests that the claimant be managed by Ms Antubam. [harassment]*

- 7.157 As noted above, this allegation was withdrawn during the claimant cross-examination. As Ms Antubam became the claimant's line manager, it was appropriate for Ms Antubam to contact the claimant. On 18 May 2022, Ms Antubam wrote to the claimant confirming that she would be the claimant's line manager. She gave some dates for a potential introductory call.
- 7.158 On 16 June 2022, Ms Antubam wrote to the claimant and said, "It will be good to meet, please can you give me your availability and the best number to reach you on..." On 16 September 2022, Ms Antubam wrote to the claimant again. Her email said, "I've recently returned from leave so reaching out to see how you're getting on..." There was no further correspondence.
- 7.159 We accept that Ms Antubam did write to the claimant. Ms Antubam did not request to manage the claimant, she simply confirmed that she was assigned as a manager.
- 7.160 She wrote to the claimant because she was her assigned line manager, and that was an appropriate thing to do.
- 7.161 In no sense whatsoever was this because of a protected characteristic or related to a protected characteristic. Harassment could neither be seen as the purpose nor the effect.

*Allegation 32 – by a person unspecified, on 7 July 2022, in a manner unspecified, putting the claimant on leave until June 2023. [harassment]*

- 7.162 This is a difficult allegation to understand. It is, essentially, unparticularised. The claimant does not explain who was said to have done what.
- 7.163 We received evidence from Ms Cigdem Guvec about how the absence management system works. Until a return date is given, the absence will be shown as open. The claimant went off work in early 2022 and so her absence was shown as continuing. The claimant was not limited in her absence until June 2023, any date was simply a consequence of being on long-term sick leave without a return date, and the way the system records the absence.
- 7.164 It is difficult to see how this alleged treatment amounted to any form of harassment. Her absence was marked appropriately on the system. There is no fact from which we can conclude that marking her absence on the system was intended to harass, even if a wrong date was somehow recorded. It could not reasonably be said to have the effect of harassment. It was not related to any of the protected characteristics in issue.
- 7.165 The claim of harassment fails.

*Allegation 33- in July 2022, in a manner not specified, following the claimant telling Ms Sharon Ogunbiyi that she did not want Ms Antubam or anyone who worked closely with David Marston, Lynda Frost, or Paul Smollem managing her, by Ms Antubam ignoring this. This appearing to be a complaint about Ms Antubam who is said to have ignored the claimant's request.[direct (race, religion), harassment]*

7.166 This allegation is against Ms Antubam. During cross-examination the claimant stated she was not proceeding with it.

7.167 We find there is no evidence, in any event, that the claimant said to Ms Antubam that she did not want to work with anyone who worked closely with Mr Marston, Ms Frost, or Mr Smollen. It follows that this allegation would fail in any event, as the treatment is not established. It cannot be direct discrimination or harassment, as the treatment is not made out.

7.168 It follows we have now considered all of the allegations. None succeeds.

**Other matters**

7.169 The claimant's submissions failed to deal with any extension of time. We do not have to reach any final conclusions, as all claims fail on their merits.

7.170 The claimant's submissions do not address why any of the allegations could be seen as a conduct extending over a period, albeit she asserts the behaviour was continuing.

7.171 We do not need to deal further with the application to strike out, as all claims failed on their merits.

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Employment Judge Hodgson

Dated: 20 January 2025

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Sent to the parties on:

23 January 2025

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For the Tribunal Office

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Appendix 1 - list of issues to be decided

Set out below is the list of issues as provided to the parties during the hearing, and as amended following any application. The list of issues reflects those claims in the amended claim, and was agreed.

Paragraph 8.1

1. Allegation 1 – in 2016, on a date unspecified, by Mr Paul Smollen ignoring the claimant’s request for a new manager. The nature and date of the request is not specified. [direct (sex), harassment]

Paragraph 8.1A

2. Allegation 2 – in 2016/2017 on a date unspecified by a person unspecified by failing to promote the claimant to an unspecified more senior role (i.e., band 8a or higher). [direct (race and religion), PTWR]

Paragraph 8.2

3. Allegation 3– since May 2018, at times and dates unspecified, in a manner unspecified, by Mr David Marston denying training (unspecified) to the claimant. It being the claimant’s statement that she has received no formal training and development since returning from maternity leave in 2020. [direct (race, sex), harassment]

Paragraph 8.3

4. Allegation 4 - in August 2018 – on a date unspecified, by Mr David Marston becoming aggressive to the claimant, in a manner not specified, after the claimant told him she was going on holiday to Pakistan.[direct (race, religion), harassment]
5. Allegation 5 – on a date unspecified, by Mr David Marston ‘kicking’ the claimant out of a meeting and stating, “Samina you are not meant to be in this meeting, you need to leave now!” [direct (race, religion), harassment]

Paragraph 8.3A

6. Allegation 6 – in October 2018, on a date or dates unspecified, by the respondent through a person not specified, not allowing the claimant to sit with the rest of her team.[direct (race)]

Paragraph 8.4

7. Allegation 7 – around 2019, on a date unspecified, but shortly before the claimant was due to go on maternity leave, by Mr David Marston telling the claimant she was mad for having more children. [harassment]

Paragraph 8.5

8. Allegation 8 – from March 2020, during the lockdown, on dates unspecified, by a person or persons unspecified, failing to give the claimant an opportunity, in a manner unspecified, to work from abroad. It being unclear whether this is said to be act or omission. [direct (race, religion), harassment]

Paragraph 8.6

9. Allegation 9 - since August 2020, on dates unspecified, by Mr David Marston excluding the claimant, in a manner unspecified, from emails and updates on work streams, being which the claimant needed to know. [direct (race, religion) harassment, PTWR]
10. Allegation 10 – since August 2020, on dates unspecified, by Mr David Marston allowing the claimant to attend unspecified WorkStream meetings with no knowledge of updates to feedback. [direct (race, religion) harassment, PTWR]

Paragraph 8.7

11. Allegation 11 – since August 2020, on dates unspecified, by Mr David Marston delegating “a lot of work to the claimant, without continuous involvement in the work or knowledge in the handover.” [PTWR]
12. Allegation 12 – since August 2020, on dates unspecified, by Mr David Marston failing to copy the claimant into unspecified emails and keep the claimant “up-to-date with regards to midwifery meetings.” [PTWR]

Paragraph 8.7A

13. There is reference to Mr David Marston incorrectly allocating histopathology funding. It is unclear what, if anything, is said to be the allegation.[direct (race, religion)]

Paragraph 8.7 B

14. Allegation 13 – in late 2020, following the claimant return from leave, on a date unspecified, by Mr David Marston blaming the claimant for sending out late histopathology letters relating to agreements. [direct (race religion)]
15. Allegation 14 – on a date unspecified, possibly in 2020, by Mr David Marston failing to tell the claimant there was a further £72,000 to be allocated and then complaining, in a manner unspecified, the claimant had allocated an extra £72,000. [direct (race religion)]

Paragraph 8.8

16. Allegation 15 – in December 2021, on a date unspecified, following the claimant's request to work more days, on a date or manner unspecified, ignoring the request. [PTWR]

Paragraph 8.9

17. Allegation 16 – in December 2021, on a date unspecified, by Mr David Marston stating the claimant was not allowed to do a postgraduate degree and stating "How can a mother do a master's degree?", And by comparing the claimant to a male colleague, Mr Rishi Athwal by saying "Your male colleague, Rishi Athwal, was able to do a master's degree as he is younger than you, single and does not have a kid." [direct (sex), harassment, PTWR]

Paragraph 8.10

18. Allegation 17 – in January 2022, following the claimant's request for project management training (the request not being specified), by Mr David Marston making it "difficult for the claimant to complete the training" including requesting the claimant complete an online taster first. [direct (race), harassment]

Paragraph 8.11

19. Allegation 18 – in January 2022, by Mr David Marston, in a manner unspecified, making allegations that the claimant had not allocated funding in time to WorkStream (unspecified). Thereafter, using the expression "There is no skin off our nose if the money was not spent." Thereafter, removing the claimant from the work stream "behind her back." [direct (sex), harassment]

Paragraph 8.12

20. Allegation 19 – in January 2022, in a manner unspecified, by Mr David Marston and Mr Stanley Babukutty telling the claimant not to attend a best place to work – change hub meeting (date unspecified). [direct (race, sex), harassment]

Paragraph 8.13

21. Allegation 20 – around January 2022, on a date unspecified, by Mr David Marston telling the claimant that "she should stop supporting a female professor, Prof Elizabeth Hughes." [direct, (sex), harassment]

Paragraph 8.14

22. Allegation 21 – in January 2022, on a date unspecified, in a manner unspecified, by Mr David Marston and Mr Stanley Babukutty denying the claimant education contract training due to take place in the 24 and 26



January 2022, it being the claimant's case the course was booked on the claimant's non-working day. [PTWR]

Paragraph 8.15

23. Allegation 22 – between January 2022, and March 2022, following complaints (unspecified) made to Ms Lynda Frost about alleged bullying and harassment from David Marston, by Ms Lynda Frost ignoring the claimant's complaints and concerns. [direct (race, religion)]

Paragraph 8.16

24. Allegation 23 – in February 2022, on a date unspecified, by Mr David Marston, and Mr Stanley Babukutty, at a risk management meeting, insulting and reprimanding the claimant for attending. [direct (race), harassment]

Paragraph 8.17

25. Allegation 24 – in February 2022, on a date unspecified, in a manner unspecified, by Ms Lynda Frost denying the claimant bereavement leave. It being the claimant's case leave was granted to Priya Unjia. [direct (religion), harassment, PTWR]

Paragraph 8.18

26. Allegation 25 – between December 2021 and March 2022, on dates and occasions unspecified, asking the claimant to inform Ms Lynda Frost what the claimant "had done in the last three months." [direct (race, religion, sex), harassment]

Paragraph 8.19

27. Allegation 26 – on dates, and times unspecified, but on "regular basis", by Mr David Marston shouting at the claimant. It being the claimant's case that in December 2021 David Marston asked the claimant what she had done over the three weeks while she was on leave and thereby telling her off. [direct (race, religion, sex), harassment]

Paragraph 8.20

28. Allegation 27 - on 22 February 22, the claimant wrote to Ms Lynda Frost making allegations against Mr David Marston, and by Ms Lynda Frost responding, on a date and in the manner unspecified, that "she did not know what the claimant wanted her to do." [direct, (race, religion, sex), harassment]

Paragraph 8.21

29. Allegation 28 – on 3 March 2022, by Lynda Frost not permitting the claimant to attend a digital champion meeting, and by asking her to discuss the matter with Mr David Marston.

[direct (race, religion), harassment]

Paragraph 8.22

30. Allegation 29 – on 3 March 2022, following the claimant's request for flexible working made to Lynda Frost, being a request to enable her to attend a digital first meeting, by Ms Lynda Frost pushing the claimant back in a manner unspecified. [allegation not specified as any type of discrimination]

Paragraph 8.23

31. Allegation 30 –In May 2022, on a date unspecified, the claimant complained, in a manner unspecified, to Ms Sharon Ogunbiyi, but being asked to return to her manager, Mr David Marston, to resolve her concerns. The complaint appearing to be the action of Ms Ogunbiyi. [harassment]

Paragraph 8.24

32. Allegation 31 – since 1 June 2022, by Ms Joyce Atubam, by email, on dates unspecified, sending requests that the claimant be managed by Ms Antubam. [harassment]

Paragraph 8.25

33. Allegation 32 – by a person unspecified, on 7 July 2022, in a manner unspecified, putting the claimant on leave until June 2023. [harassment]

Paragraph 8.25A

34. Allegation 33- in July 2022, in a manner not specified, following the claimant telling Ms Sharon Ogunbiyi that she did want not Ms Antubam or anyone who worked closely with David Marston, Lynda Frost, or Paul Smollem managing her, by Ms Antubam ignoring this. This appearing to be a complaint about Ms Antubam who is said to have ignored the claimant's request.[direct (race, religion), harassment]

Summary

35. The acts of direct discrimination (race) are said to be in paragraphs –8.1A, 8.2, 8.3, 8.3A, 8.5, 8.6, 8.7A, 8.7B, 8.10, 8.12, 8.15, 8.16, 8.18, 8.19, 8.20, 8.21, 8.25A
36. The acts of direct discrimination (religion) are said to be in paragraphs – 8.1A, 8.3, 8.5, 8.6, 8.7A, 8.7B, 8.15, 8.17, 8.18, 8.19, 8.20, 8.21, 8.25A

37. The acts of direct discrimination (sex) are said to be in paragraphs – 8.1, 8.2, 8.4, 8.9, 8.11, 8.12, 8.13, 8.16, 8.18, 8.19, 8.20
38. The allegations of harassment they are said to be contained in paragraphs – 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.9, 8.10, 8.11, 8.12, 8.13, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.21, 8.23, 8.24, 8.25
39. The acts of less favourable treatment in breach the PTWR are said to be contained in paragraphs – 8.1A, 8.6, 8.7, 8.8, 8.14, 8.17.