



EMPLOYMENT TRIBUNALS

Claimant: Ms Weigang Yan

Respondent: Westminster City Council

Heard at: in person at the Central London Tribunal

On: 20, 21, 22, 26, 27 November 2024 (with the parties) 28 November 2024 and 3 December 2024 (in Chambers)

Before: Employment Judge Woodhead
Ms Thayyiba Shaah
Mr T Cook

Appearances

For the Claimant: In person

For the Respondent: Mr H Zovidavi (Counsel) with Miss S Parker (instructing solicitor)

JUDGMENT WITH REASONS

The unanimous decision of the Tribunal is that:

1. The complaints of direct race discrimination are not well-founded and are dismissed.
2. The complaints of direct sex discrimination are not well-founded and are dismissed.
3. The complaints of harassment related to race are not well-founded and are dismissed.
4. The complaints of harassment related to sex are not well-founded and are dismissed.
5. The complaints of victimisation are not well-founded and are dismissed.
6. The complaints of unauthorised deductions from wages are not well-founded and are dismissed.
7. The complaints of breach of contract are not well-founded and are dismissed.

REASONS

THE ISSUES

8. The date of receipt by Acas of the EC notification was 29 September 2023 (Day A). The date of issue by Acas of their Certificate was 02 October 2023 (Day B), by email. The Claimant's claim was received by the Tribunal on 31 October 2023. The Claim was therefore submitted within one month of Day B and the date before which claims may be out of time is therefore 30 June 2023 (being 1 day after 3 months before Day A).
9. The Respondent is a local authority. The Claimant made the following complaints:
 - 9.1 Section 13 Equality Act 2010 (EqA) - direct sex discrimination;
 - 9.2 Section 13 EqA - direct race discrimination;
 - 9.3 Section 26 EqA – sex harassment
 - 9.4 Section 26 EqA – race harassment
 - 9.5 Section 27 EqA – victimisation
 - 9.6 unlawful deduction from wages/breach of contract – this relates to:
 - 9.6.1 pay for the period 1 – 6 October 2023 which the Claimant says she has not received
 - 9.6.2 a pay award for the period 1 April 2023 to 30 August 2023.

THE HEARING

10. This hearing was listed, at a Preliminary Hearing for case management on 5 February 2024 ("**the CMPH**"), for seven days (between 20 November 2024 and 28 November 2024 inclusive) to deal with liability and remedy (if appropriate). Owing to Tribunal resources it was not possible for EJ Woodhead to sit on 28 November 2024 and the hearing on 25 November 2024 had to be cancelled due to travel disruption arising from Storm Bert.
11. At the start of the hearing we were provided with:
 - 11.1 A bundle of 842 pages
 - 11.2 Witness statements:
 - 11.2.1 **The Claimant** – (48 pages) **CWS[]**

- 11.2.2 **Mr G Muctor** – (30 pages) is now Chief Data and Technology Officer, Digital and Innovation (D&I) in the Finance and Resources Directorate of the Respondent but in the period relevant to the Claim he was Chief Architect and Data Officer. Mr Muctor was line manager of the Claimant from 12 June 2023 until the Claimant’s dismissal **GMWS[]**
 - 11.2.3 **Ms D Clarke** – (5 pages) – She attended the probation review meeting on 4 September 2023 as HR representative **DCWS[]**
 - 11.2.4 **Ms Z Kubascikova** – (7 pages) - Payroll and Pension Specialist in the People Services Directorate **ZKWS[]**
 - 11.2.5 A Claimant Chronology
 - 11.2.6 A Respondent Chronology
 - 11.2.7 A Respondent Cast List
- 12. The written witness evidence totalled 90 pages.
 - 13. Before we started to hear evidence we sought to put the Claimant on an equal footing by explaining the process and in particular by providing guidance on:
 - 13.1 The importance of the list of issues as defining the matters that we would be asked to determine and therefore the focus that the parties should put in cross examination;
 - 13.2 The process of hearing the evidence and cross examination, tribunal questions, re-examination and the need for the Claimant, when it came to her cross examination of the Respondent’s witnesses, to challenge them on things that they say in their witness evidence which are relevant to the List of Issues and which the Claimant disputed.
 - 13.3 We made clear that, as such, the List of Issues should be a useful tool for the Claimant to focus her cross examination.
 - 13.4 We explained that if a witness is not challenged on the evidence in their witness statement the Tribunal is entitled to accept that evidence (take it at face value) and that if the Claimant did not challenge a witness on a material point then that could affect the Claimant’s ability to establish her case.
 - 14. The Parties advised us of the adjustments that were needed for those participating in the hearing. We made clear that the Claimant could ask for breaks if she felt she needed them, but also made clear that anyone could ask for a break if they needed it.
 - 15. We reminded witnesses under oath that they were not permitted to communicate with others about the case during breaks or adjournments while they were giving evidence under oath.

16. There was no formal list of issues and the unlawful deduction from wages claim and breach of contract complaint remained unclear. We prepared a draft List of Issues to reflect the claim and what appeared to have been agreed at CMPH.
17. We explained that as this was the final hearing and as no application to amend had been made and the Claimant had only been asked to clarify her unlawful deduction from wages claim and breach of contract complaint following the preliminary hearing, any application to amend would need to be considered in that context. We sought to clarify the basis for the unlawful deduction from wages claim and breach of contract complaint unsuccessfully and decided that it was preferable for the parties to use the time while we were reading the witness statements to finalise the list of issues. We sent them our draft as a word document together with a proposed timetable for the hearing which we had based on the parties' estimate of times for cross examination and what we considered to be a proportionate allocation of time.
18. The parties had made progress with clarifying and narrowing the breach of contract/unlawful deduction from wages complaints and it was agreed that there was no holiday pay claim. The parties agreed to finalise the LOI and send it to us for the start of the day on 21 November 2024. After we explained the difference between background, complaints and the LOI, the Claimant confirmed that (subject to clarifying the breach of contract/unlawful deductions complaint) she agreed that the LOI was reflective of the matters in her Claim. The parties also agreed the proposed timetable.
19. One of the reasons for hearing the Claimant's evidence first was that it would afford the Claimant the opportunity to experience cross examination and then prepare her own cross examination of the Respondent's witnesses.
20. We spent what remained of 20 November 2023 reading the witness evidence presented to us and working with the parties as they finalised the list of issues (included in the Appendix to this judgment).
21. We kept the timetable under review with the parties as the hearing progressed.
22. We guided the Claimant during their cross examination of witnesses on how to focus that cross examination (including reminding her that she did not need to get the witness to agree with her –she just had to put her case to them) and encouraged her to plan and prioritise her cross examination.
23. On the second day of the hearing, 21 November 2024, we reviewed and discussed with the parties the amended list of issues which had been sent into the tribunal that morning and which have been discussed by the parties the previous day. After some discussion the claimant applied to amend her claim to include a claim in respect of pension which was set out at page 697 of the bundle as follows:
 1. Total Gross Pensionable Pay (Total salary £30052.5 by 30/09/2023 + Total salary pay award
 2. due £1176.00 + Total PILON £1200)) £32429.46
 3. Total pensionable pay in LGPS £31021.94

Total pensionable losses £1407.52

24. It was agreed that the Claimant was part of a career average pension scheme with the Respondent namely the local government pension scheme. We considered the Claimant's application to amend but did not grant it for reasons that we explained at the hearing taking into account balance of prejudice, the overriding objective in Rule 2, applying the principles set out in **Selkent Bus Company v Moore [1996] ICR 836** and **Vaughan v Modality Partnership UKEAT/0147/20/BA**. We concluded that the application to amend should not be granted because:
- 24.1 The legal basis for the proposed amendment was not clear.
- 24.2 To the extent that we understood what the Claimant was alleging, it appeared to be a complaint about what might happen in the future if, when she comes to draw her career average pension, the pension scheme does not pay it on the basis of a correct calculation.
- 24.3 This was the final hearing of the claim.
- 24.4 The Claimant's statement did not deal with the issue.
- 24.5 The Respondent fairly did not understand the nature of the amendment and had not had the opportunity to take legal advice, undertake disclosure or seek witness evidence on the issue.
- 24.6 The amendment would have need to have been applied for much earlier.
25. The Claimant raised further concerns about the basis on which the Respondent had calculated her pay at the start of her employment between 21 November 2022 and 30 November 2022. She appeared not to agree with the Respondent's method of calculating and prorating her pay for that incomplete month. She also raised matters about continuity of service in respect of employment with another Council that she had been employed by prior to her employment with the Respondent. It was clear that she did not know what claim, if any, this might give rise to and she needed to consider this further. Having asked how long it might take for this hearing to be relisted and hearing our indications that it would be mid to late next year at the earliest, she did not apply to amend her claim in respect of either of these matters.
26. The Claimant had sent an email to the tribunal suggesting that she needed more time for cross examination. We considered her request but concluded that the timetable agreed with her the previous day gave her a fair and proportionate opportunity to cross examine the Respondent's witnesses. We made clear that we would require her to have concluded her cross examination of Mr Mukhtar by 12 noon on Monday, 25 November 2024 and to have concluded her cross examination of the other two witnesses that afternoon making allowance for need for the employment tribunal to ask any questions and Mr Zovidavi to have raised any questions of re-examination. We were discussing these matters until around 11:20 in the morning and then commenced the Claimant's evidence. We took a short lunch and sat late in the day in order to conclude the Claimant's evidence. We gave the Claimant the opportunity to re-examine herself before her evidence

concluded. At the end of the day we reminded her of the benefit of structuring her cross examination of the Respondent's witnesses in line with the list of issues and that she did need to challenge the witnesses and put her case to them. She did not have any questions having been given that guidance.

27. On Friday, 22 November 2024, we heard the evidence of Mr Muctor. We sought to level the playing field by guiding Claimant on the matters she could focus on cross examination and reminding her of the passing of time and the need to cross examine on all elements of the list of issues including the victimisation complaint.
28. As referenced above, we were not able to sit on Monday 25 November 2024 due to travel disruption arising from Storm Bert. On Tuesday 26 November 2024 we continued to hear the evidence of Mr Muctor and then heard evidence from Ms D Clarke and Ms Z Kubascikova. The Claimant concluded her cross examination of Mr Muctor before the time allocated and was afforded the time she needed to cross examine Mrs Clarke and Ms Kubascikova. However, the Claimant frequently strayed into questions that were unrelated to the list of issues. We guided the Claimant in this respect but it was something that she persisted with, including asking questions on the pensions issues that were the focus of the amendment application that we had refused. At the end of the day we sought to guide the Claimant on the options for submissions.
29. On Wednesday 27 November 2024 there was further bad weather which prevented Mr Cook and Ms Shaah from getting to the Tribunal. They joined the hearing via CVP. The Respondent presented written submissions and made brief oral submissions. The Claimant said that she had not had time to read the written submissions. She declined our offer of time to read the Respondent's submissions and declined our offer of time to consider what the Respondent had said orally. The Claimant wanted to go straight to giving her oral submissions. The hearing concluded at 11:45 (having started at 10:30) and we told the parties that we expected to deliberate further on Friday 29 November 2024 and then issue a written judgment and reasons. We explained that there may be some delay in promulgating that written document and asked for the parties' understanding. They did not comment on our proposal.

FINDINGS OF FACT

30. Having considered all the evidence, we find the following facts on a balance of probabilities.
31. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues.
32. The headings used below are not intended to summarise our findings, they are used to signal a new topic or point in the chronology

Background, D&I team and recruitment of Claimant and comparator

33. We accept Mr Muctor's evidence about the creation of the team in which the Claimant worked and her recruitment as follows:

- 33.1 The Claimant started her employment with the Respondent on 21 November 2022 [169 - 182] as a Data Scientist in the Respondent's newly created Data and Architecture Teams within the Digital and Innovation (D&I) Team.
- 33.2 The D&I Team is part of the Finance and Resources Directorate of the Respondent.
- 33.3 The Respondent has been creating the D&I team to build a complete data capability so that the Respondent can better tailor its services, make better decisions and understand more about what its residents need from the organisation. There has been room for innovation and flexibility, as the team has had to develop and embed processes as it has evolved and grown.
- 33.4 The D&I service had relatively recently (around September 2022) been disaggregated from a bi-borough entity to a sovereign entity solely for the Respondent. This provided the Respondent with the opportunity to design and establish the entire D&I department from scratch, with a new operational model, structure and ways of working. The Data and Architecture Teams was also being built from scratch.
- 33.5 On the commencement of her employment Mr Muctor was the Chief Architect and Data Officer and was responsible for the newly created Data and Architecture Teams.
- 33.6 The Claimant's white male comparator, EK, was also successfully appointed as a Data Scientist at the same time as the Claimant and Mr Muctor was involved in shortlisting applicants and was on the Panel for the interviews of both the Claimant and EK.
- 33.7 We accept that the Respondent had not intended to recruit two Data Scientists, but the Claimant and EK were both good candidates and brought different skills and strengths.
- 33.8 The Claimant had a social science background and had experience managing people, so she was appointed to a role which had line management responsibility.
- 33.9 EK had technical experience, but no management experience, so he was given a slightly different role with no management responsibility. The Claimant started on 21 November 2022 and EK started on 30 January 2023.
- 33.10 Both the Claimant and EK were employed on the same band (Band 4, Scale 4) and pay (£60,105, after Local Government Pay Award for 2022/23 was applied). We accept that the Claimant and EK both had the same contract of employment. Their employment was subject to a 6-month probationary period [171] which was standard practice on the recruitment of new staff. The applicable clause says:

4. Probationary Period

Your employment is subject to a six months' probationary period during which time your suitability for appointment to the permanent staff of the Council will be assessed.*

Once you have successfully completed your probationary period, you will not be required to complete further probationary periods, should you obtain another role but remain employed by the Council.

During your probationary period, either you or the Council may terminate your employment by giving one week's written notice.

The Council may extend the duration of your probationary period by giving you notice in writing before the expiry of the original period. If this happens, you will be told the date when your extended probationary period will be reviewed again.

In the case of an extension to the probationary period, the above conditions will continue to apply for the duration of the extended probationary period. Assuming, that the extended probationary period is satisfactorily completed, your employment will then be confirmed.

(Not applicable for internal appointments of existing WCC staff who have completed their probationary period) [171]*

33.11 We also accept Mr Muctor's oral evidence that both EK and the Claimant had the same job description ("**JD**") subject to one difference being that the Claimant's made reference to her line management responsibility [164-168]. In that regard it said:

Direct Reports:

Data Analyst x 2

GIS Analyst x 2

Data Custodian x 2

Apprentice

33.12 We accept Mr Muctor's evidence that both JD's (the Claimant's and EK's) said:

"Budget Responsibilities: Responsible for a revenue budget of c£1m per annum, this includes both staff and non-staff costs. The role also involves financial management responsibility of capital projects as required"

but that neither the Claimant nor EK were in fact responsible for managing a budget.

33.13 We accept Mr Muctor's evidence that, even when the JDs were issued to the Claimant and EK, they did not reflect the true position and intended team structure because there had been consultation prior to their appointment which led to changes and the JDs had not been updated accordingly.

33.14 Mr MJ was appointed as Head of Data and started his employment on the same day as the Claimant. Mr MJ was the Claimant's direct line manager and he reported to Mr Muctor. Mr MJ was technically experienced but not experienced in line management and had come from a private sector background (he did not have Local Authority experience). The team structure was relatively flat in that only Mr Muctor, Mr MJ and the Claimant had any employees reporting to them. It became flatter when in June 2023 Mr MJ resigned and Mr Muctor took over his role.

33.15 The growth of the Data Team was rapid. It had only two employees in late 2022 but by mid-2023 it had 12.

33.16 Processes and procedures were developed ad hoc and through trial and error. They continue to evolve.

Other team members in so far as relevant to this claim

- 34. In this judgment we use the abbreviations assigned to team members names as adopted in the cast list. We add to this as follows:
- 35. SD - Departmental HR partner (specialising in discrimination)
- 36. Amber - Senior delivery manager, D & I
- 37. YD - Culture, Engagement and Communications Lead
- 38. Onika - Business analyst, D&I
- 39. ES - Data engineer
- 40. KH - Solution architect Ashraf Data & Intelligence Manager, Innovation & Change
- 41. DLW - Solution architect
- 42. DH - Chief Data Analyst, I & C
- 43. VS - Contract data architect
- 44. CH - Lead Data Scientist, I & C
- 45. SR – Head of Strategic Service Change – Environment, Climate and Public Protection

The Claimant's role

- 46. As set out in the Respondent's grounds of resistance, the Claimant's role as a Data Scientist included but was not limited to:

- 46.1 Working across the whole of the Respondent's Digital and Innovation portfolio, supporting activity across core IT and technology, customer and digital, and projects such as 'Smart City' to realise the Respondent's ambitions to make Westminster a world class city. The role required a proactive and relentless focus on delivery.
- 46.2 Working on a range of tasks such as in product teams to iterate digital products to continuously improve and meet the needs of the Respondent's users, or as a member of a project team to deliver agreed outcomes.
- 46.3 Work with the Respondent's service teams to make fundamental changes to how they work with data, using data science techniques.
47. As part of the interview process for the role the Claimant was asked to give a presentation on how she proposed to lead, build new capabilities and recruit and lead the right people [518]. We find that this was a sort of pitch for what she might do if she were offered the job. However, we find, on the balance of probabilities (and because she later raised elements of this presentation in her appeal against her dismissal) that she took too literal an interpretation of this aspect of the recruitment process. It appears that the Claimant saw the fact that the Respondent then offered her the role, as the Respondent committing to her proposal for the team structure that she had suggested in her presentation. In fact the process of building the team was more complicated than that and needed to be flexible. The management responsibilities anticipated in the Claimant's job description were also not fixed, they needed to flex and evolve with the evolution of a team that was growing quickly and seeking to establish its priorities and needs.
48. During the period of her employment the Claimant did not in fact have the number of direct reports recorded in her job description. The Claimant managed JJ (Gazetteer Curator), AG (GIS analyst) and DD (Data Analysts) and latterly RJ (Apprentice recruited during the Claimant's employment). Managing others would have taken about 20% of the Claimant's time. JJ had a self contained role that he had done for many years and his role was procedural. AG would have required more management time in respect of requests coming to the team. DD was an expert on Power BI and would not have required much management.
49. The Claimant put some focus on the fact that the Respondent's HR system (IBC) did not reflect her management responsibilities or the reporting lines that came into her. However, whilst this might have been frustrating and might have reduced the Claimant's ability to see reviews and other matters relating to her direct reports, it was nonetheless just a systems error that need to be rectified.
50. We accept Mr Muctor's evidence [GMWS13] that whilst Mr MJ was the Claimant's direct line manager, Mr Muctor had regular contact with the Claimant and she would approach him with project ideas.

Probation policy

51. The Respondent's probation policy provides amongst other things [91-94]:

51.1 That there shall be regular 1-1 meetings between the probationer and their

manager during the third and fifth months;

51.2 Areas for improvement will be discussed;

51.3 The probation period can be extended where performance has not been as expected but the manager thinks it may improve;

51.4 Any extension will not normally exceed three months;

51.5 If at the end of the probation period performance is still unsatisfactory the probationer will be invited to a formal meeting at which they can be accompanied. The manager will explain the performance shortfalls and give the probationer the right of reply.

51.6 If the probationer fails their probation they will be given one weeks' notice and will have a right to appeal to the Head of Unit. In those circumstances a formal meeting is arranged and the Head of Unit will take into account the 3 and 5 month assessment reports.

52. We were not provided with evidence that Mr MJ had conducted regular 1-2-1s and we were not taken to the three and five month assessment reports.

Work allocation over the course of the Claimant's employment

53. The Data Team was rapidly expanding and it was having to develop its processes and procedures as it grew and through trial and error. This process continues to this day. We accept Mr Muctor's evidence that the D&I team are having to "*learn what works best and look to implement repeatable and mature practices*". In the very early days of the team Mr MJ implemented a type of IT ticketing process through which other departments could make requests of the Data Team. Mr MJ then started to use a spreadsheet to capture the work that his team were undertaking. That evolved into a dashboard in a software application called JIRA.

54. By around April 2023 a more formal governance process was developed and started to be implemented. One of the aims of this was to ensure that the Data Team understood what Data Team members were doing and to ensure that the Respondent was satisfied that the projects that were being worked on were targeted at the most pressing needs and were going to achieve deliverable solutions in an acceptable timescale.

55. If a proposal for a project was accepted through the governance process it would be added to the Workstack. This entailed an opportunity form being created. The opportunity form would then be formally considered by the Project Management Office and would not be allowed to proceed and be added to the Workstack until an assessment of the teams resources (resource management) had been undertaken. Only then would work formally be given the go ahead. This process necessitated input from teams across the Respondent because the Data Team needed to work effectively with a number of different teams to ensure work was effectively prioritised and resourced (projects are not normally delivered solely by Data Team employees).

56. We accept Mr Muctor's evidence that the Claimant did not use the Workstack and tended to work on matters that had not been through the governance process. It was this that led LN (Delivery Manager) to create a new tab in the Workstack to record the Claimant's work. This tab for the Claimant represented work that was surplus to the team's key projects and core deliverables.
57. Mr MJ found that the Claimant had failed her probation in May 2023 and he then resigned from employment with the Respondent in early June 2023. The Claimant successfully appealed Mr MJ's decision to Mr Muctor and Mr Muctor then became the Claimant's direct line manager.
58. On becoming her line manager Mr Muctor made clear to the Claimant that she should be working on projects that had been approved in the governance process and which were in the Workstack. The Workstack was managed by LN (Delivery Manager) and Mr Muctor did not get involved in the allocation of work, unless there was an issue. The Claimant did not heed Mr Muctor's guidance:
- 58.1 On 15 June 2023 Mr Muctor felt the need to send the Claimant the following email [277] (copied to a number of others):

Yan, all,

thanks for this but please note that it is important that both the green energy transition and the building emission data pipelines are delivery first and as priority. This is with the data engineering team and the first cut needs to be in before September.

Any new ideas such as the digital twins need to be parked for the time being.

- 58.2 We accept the notes that Mr Muctor made of one to one meetings he had with the Claimant which record [435]:

10th July

1. feedback was given on the network coverage heat map. Quality of what was produced was not what the customer expected, and the maps were confusing and did not help in generating insights.

*Feedback meeting held on the **25th of Aug.** Key points discussed.*

1. Not following the process. Even though the process has been presented to the D&I and Martyn has taken the team through the governance process Yan does not adhere to it. Leading to a number of areas that

2. She engages business stakeholders on new idea which has the impact of taking time away from projects that are already prioritised and committed. It also means she has a number of activities that are not aligned with the D&I priorities. She also allocates team member to support her activities. This is leading

to team members being distracted and confusion in the team.

3. There is a ambiguity on her role. Often she is adopting a pure management role but not focused her core areas of activity. She also tries to steer architectural designed and solution outside of the TDF and ARB processes.

4. There is a lack of clarity on what she has delivered in 9 months.

Follow up meeting 30th of Aug.

General observation on performance,

- Difficult to understand what has progressed and activities completed.*

- Conversation is unstructured and therefore difficult to follow for stakeholders and team members*

- Tendency to complicate project that have a specific outcome/benefit by introducing MDM or venerable people. E.g. we discussed last week was : footfall linked to building capacity then a link made to vulnerability.*

- Not understanding other D&I team member roles and delegating to them e.g. Pat and CSM.*

59. By not focusing on the work in the Workstack the Claimant was also putting her energy into work that did not have the necessary wider resources allocated to it. The Claimant did not seem to see that the fact that external teams might have been keen for her to develop a project and broaden its scope did not mean that it could therefore be a priority for the D&I team (which had limited resources). That was why there had to be a governance process and why it was more important that Mr Muctor, and the governance process, accepted the scope of a project and that the necessary resources could be allocated to it. External stakeholders, who presumably would always be keen for more, were not as well placed as Mr Muctor, to understand what could feasibly be delivered with the finite resources available to the D&I team.
60. We accept Mr Muctor's evidence [GMWS14] that after the Claimant had been in post a few months, Mr MJ raised performance concerns with him about the Claimant. We accept his evidence that the Claimant's work on network connectivity was unusable (resulting in a project being scrapped) and that she did not take on board feedback that her work needed to be simplified. We accept Mr Muctor's evidence that the Claimant also tended to overcomplicated the work she was doing. An example of this was the vulnerability project in which the Claimant sought to overreach by trying to include sets of data which involved too many teams and which overcomplicated the project. This created the risk that the project would not progress and deliver usable results in an acceptable timeframe. This is an example of an occasion where the Claimant did seek governance approval in March 2023 but she did not follow it up until 25 August 2023 [433].

EK as comparator

61. We find that EK (the Claimant's white, male comparator) was a good performer who passed his probation period. We find that in the Spring/Summer of 2023 EK was approached by another employer and was offered a role with them on a higher salary. He told the Respondent about the offer. Since the Respondent rated EK highly and wanted to retain EK in its employment it offered EK a pay increase and to move him into the band above [612]. EK accepted this offer notwithstanding that it did not match what he had been offered by the third party that had approached him.
62. We find that the EK was focused in his work and made sure that he spent his time on projects that were a priority for the Respondent and, more specifically, the D&I team and which, as the process evolved, had been approved through the governance process. EK focused on work that was within the Workstack and importantly this work, because it had been through governance and resource management, had the wider resources necessary allocated to it.

PC's allocated to the team

63. We accept Mr Muctor's evidence [GMWS38-42] as follows:
- 63.1 When the Claimant started in her role, she was provided with a standard laptop (Surface Pro);
- 63.2 This was standard issue to all staff in the team (with the exception of staff who required different devices due to disability);
- 63.3 It was acknowledged by the Respondent that Surface Pro laptops were not of a high enough specification to do some of the tasks that members of the D&I team needed to do;
- 63.4 A member of the IT team was designated to look at the solutions to this and work was done to look at what devices would be appropriate, given the type of use and applications required.
- 63.5 The Claimant was involved in gathering information from the team for that purpose [202 – 206 and 320 – 321].
- 63.6 There was evidence that on 5 January 2023 Mr MJ consulted the Claimant on PC specifications when he asked her in an email [803] "*Hi Yan. I am planning to order high spec laptops for our team you have any specific model in mind?> can you look it up and let me know which laptop u prefer?*".
- 63.7 This included looking at the suitability of Macs and getting information about the applications compatible with them.
- 63.8 Mac and Lenovo devices were being tested by members of the team, Mr MJ having asked for volunteers. EK volunteered and was given a Mac to test. There was no evidence of the Claimant having volunteered. Mr Muctor was not involved in deciding to whom test machines should be allocated. Purchasing and testing decisions were made by the Respondent's Chief Technology Officer.

63.9 The testing process took some time and coincided with the Respondent's general hardware refresh programme. This was outside Mr Muctor's control.

63.10 It became apparent that Macs were not suitable because they did not run all of the applications that the Claimant's team used.

63.11 There is no evidence that Mr Muctor or Mr MJ blocked the Claimant from being provided with a higher specification PC (whether for testing or otherwise) and she did not raise with Mr Muctor that she was concerned about not having been treated equally in this regard.

64. There was no evidence that race or sex were taken into account in the allocation of test computers to employees of the Respondent.

5 May 2023 probation review

65. As we have said, Mr MJ was fairly new to line management and had no Local Authority experience. We accept that Mr MJ raised performance concerns about the Claimant with Mr Muctor and accept that Mr Muctor advised Mr MJ to raise those concerns with the Claimant in 1-1 meetings, if Mr MJ did then in fact do so and did follow the Respondent's probation policy, we were not taken to evidence of it.

66. On 5 May 2023 Mr MJ held a probation review meeting with the Claimant (for which there are no notes) and terminated the Claimant's employment with notice issuing her with the following letter [222]:

05.05.2023

Re: Unsatisfactory Probation Outcome

Dear Yan Weigang,

Further to your 5-month probationary review meeting on 5th May 2023, I write to confirm the decision to terminate your contract of employment in accordance with the Council's Probation Procedure.

This decision has been made because you have not made sufficient progress in the following areas:

- Lack of focus on delivery and outcomes*
- Failure to take ownership and responsibility resulting in toxic blame culture that undermines trust, collaboration, communication and innovation, which are core Westminster values.*

Furthermore, your last day of service with Westminster City Council will be 19th May 2023.

You will receive one week's notice and your notice period is effective from 12th May 2023.

You will be paid for the period of your notice and you will be required to come to work during the notice period.

You have the right to appeal against this decision within 5 working days of receipt of this letter. Appeals should be addressed in writing to Gurpreet Muctor, stating the grounds for your appeal.

67. We find that this letter was issued under cover of an email which said [221]:

Subject: 5-month probation review

Importance: High

Hi Yan,

As discussed, there are concerns about your cultural fit to Westminster values and suitability to the role.

[...]

May 2023 dismissal appeal

68. On 10 May 2023 the Claimant appealed against her dismissal by email saying [220]:

Email 10:26 C to GM and AH

Subject: FW: 5-month probation review

Dear Gurpreet

Appeal against my dismissal and request for an appeal hearing

In [Mr MJ]'s letter dated 05/05/2023, he has informed me that I am to be dismissed from my employment with Westminster City Council due to the following reasons.

- Lack of focus on delivery and outcomes*
- Failure to take ownership and responsibility resulting in toxic blame culture that undermines trust, collaboration, communication and innovation, which are core Westminster values.*

Following the procedure outlined in this page Probation (sharepoint.com), I wish to appeal against this decision and to request an appeal hearing.

I am challenging the dismissal decision and I am requesting an appeal because

- [Mr MJ] didn't provide me with a 3 month review report and 5 month review report in writing for his dismissal decision. I received no copies of these reports in the last 5 months. In the seasonal catch-up dated*

27/03/2023, he claimed that he collected a piece of comment that "raise the problem but never own the problem" without giving me any specific example. He sent the report to HR but sent me no report regarding this review.

- [Mr MJ] jumps to conclusions without checking my project delivery and outcomes properly.
- [Mr MJ] refuses to accept the nature and complexity of certain data sets in local authorities but interprets the conflicts in dealing with the complexity as failure to take ownership and responsibility.

I attach the following document in support of my appeal, which include:

- Evidence against the claim he has made.
- Screenshots of project delivery and outcomes to support the evidence.
- Conversations I have with colleagues which are associated with the concerns of ownership and responsibility.

I am considering raising a grievance about the way in which this decision has been reached and the way I have been treated in Westminster City Council. I do not believe the process for the decision has been fair. In fact, I believe that I have been unfairly disadvantaged.

I would like to invite [AH] to come to the appeal hearing, so that she can contribute to the review of the dismissal decision and comment particularly on the reasons that were given in support of it. Meanwhile, she is related to the vulnerable people project delivery [Mr MJ] is not happy about and has a complaint as you and [AH] have asked for a project on vulnerable people. I feel appropriate to invite her to be in the appeal hearing.

Please confirm the date that you propose for the appeal hearing. I am able to make it workable for you. I will need to confirm with [AH] as well.

[...]

69. Attached to the Claimant's email were documents which read as follows [223-222]:

"Lack of focus on delivery and outcomes".

- Regarding [Mr MJ]'s comment on delivery, I have delivered the Proof of Concept for mobile networks as [DW] has requested. The requirement from [DW] is mobile network capacity maps created from sampling points, which should be uploaded to the connectivity web portal. Attached are the screenshots of the SharePoint site I have created to share the analytical outputs to GIS staff in WCC and in RBKC(Figure 1, 2,3,4,5). I have delivered the maps required for the project and Anna has uploaded the files to the web portal. The progress of the project is

documented in the confluence page and the sharepoint site. I have gone extra miles from the requirement and information shared by [DW]. The project scope and technical solution described in the Confluence page has gone beyond the original requirement from [DW]. While I have been testing the proof of concept for scale-up deployment, in the latest catchup with [DW] I have learned that his initiative has not been supported by the cabinet at this stage and no further data can be collected. Based on this situation we need to put further analysis on hold. While I explained this to [Mr MJ], his interpretation is that I have no delivery and outcome and blame [DW] to pause the project. Regarding vulnerability project development, the original problem I have received from Gurpreet is where the vulnerable people's information is and whether we can develop machine learning models from it. After meetings with different service departments, the analysts and I have identified the databases with vulnerable people's information. I have developed a general technical framework for the databases and relevant datasets (Figure 6). This technical solution has been sent to [MD] for further analysis and technical support. He understands it. I explained it to [NAME] and his team. They understand it. I explained it to [NAME]. She understands it. The comment I received from [Mr MJ] is that it is not clear and there is no delivery. On the other hand, I have explained to [Mr MJ] that Liverpool council took 5 years to deliver a similar project for homelessness prediction and Cornwall council 18 months to deliver their cloud solution for a single view of vulnerability. The memorandum of DWP for using their data [NAME] and [NAME] have shared indicates that we need to make an application to use their data. However, [Mr MJ]'s interpretation is that I have not delivered anything for this specific project and I blamed the system for not producing outcomes.

"Failure to take ownership and responsibility resulting in toxic blame culture that undermines trust, collaboration, communication and innovation, which are core Westminster values. "

- [Mr MJ] seems to have little knowledge of my role and responsibility in the organisation. I have been asked in the interview for my position to construct a team of data science. For this reason, Gurpreet has arranged the analysts and the apprentice for me. Despite the announcement in the departmental meeting, after three months of work I have not received these staff's related documents and IBC responsibility of these people until I sent an email asking [Mr MJ]. After Stacy transferred Reanna's profile to [Mr MJ], I had to ask [NAME] to re-allocate [NAME] the data analyst apprentice, to my team under IBC in March. In April, Gurpreet allocated a data analyst in my team. When I asked [Mr MJ] about this position he asked me to remove it. However, [DDM] told me that he and [EK] were interviewing a data analyst. This has given me an impression that he is following Gurpreet's instruction or the communication is not clear.
- [Mr MJ] allocates tasks to my team without communicating with me. I was not aware of the five year GIS roadmap Anna had been asked to deliver in a very short period, until she told me. I was not aware of the

analyst you asked [NAME] and [EK] to recruit until [NAME] told me. [NAME] was not aware of the necessary HR procedure he needed to follow before I explained to him. I was not aware of the GIS training course [Mr MJ] has arranged for [NAME]. The necessary contact and management of GIS assets are not allocated to me to enable me to do the work. Although I have asked him to transfer the responsibilities, he didn't reply to me. He allocates tasks to staff under my management without explaining to me the workloads and the expectation for these people. He doesn't engage me in the development work these people are involved in either. Given that he has been managing people and the area of work on behalf of me, it is hard to know what workload people have been allocated. This has affected the management of development and wellbeing of these staff members. He allocates tasks such as 5 year GIS road map to [NAME] who has limited exposure to stakeholders and the extent of GIS work in the council. Poor clarity on roles and responsibilities have led to miscommunication and misinterpretation in my management work. While I was seeking clarity from him, he was not patient enough to answer the questions.

- [Mr MJ] appears not to understand the scale, the complexity and the extent of a project in the council. This has made communications on project development difficult. He has commented that I have got a business analyst to develop a business case and no one requires a business analyst to develop their project. I assume that he means why I have such privilege. Gurpreet has arranged one for me as this analytical position is required for project development when I presented the team structure and timeline for project scoping in my interview. The time scale to identify project scope is proposed as 3-6 months due to the complexity of the council project. However, [Mr MJ] has allocated the analysts, [NAME] and [NAME] multiple projects to develop business cases. Last week before [NAME] left the organisation, she spent 90% of her time on the disaggregation project and could not update anything for the vulnerability project. The distraction from various projects has prevented the analysts from understanding the nature of data sets and capturing complex information required for the vulnerability project development. So far, I have developed the architecture framework for the vulnerability project and identified the use cases for the platform. He has surprised me that he claimed I didn't deliver anything with the support from business analysts.

- [Mr MJ] gave vague comments and feedback, which is not good for communication and resolving problems. In the seasonal catch-up dated 27 March, he gave me the feedback that "raise the problem but never own the problem". I asked him the specific problems he referred to. He didn't give me any explanation on who gave this feedback and what problems exist but gave me an answer that he would send the feedback to HR. In the past I raised a few questions regarding the current arrangement for the work forwards. First one is the architect required for GIS server maintenance. I asked [MD] the question whether this area of work can be covered by an architect. He has helped to arrange [NAME] to cover this area of work. The second problem is the cost of the Hitachi

solution for the air quality project. I questioned whether the cost was too high as the data volume is very small. This has been discussed with [NAME] and [RD] (Figure 7). [NAME] suggested the infrastructure team and data engineer can resolve the problem. However, the answer I have from [Mr MJ] was to keep quiet when I reported it to him. Nevertheless, I assumed that the comment [Mr MJ] collected was from [RD] so I proposed a solution to [MD] and [Mr MJ] (Figure 7 and Figure 8). Third one is that he questioned me whether I know what data lake was as I raised the problem of using data lake. I have explained its function to him. In workshops with Hitachi in January 2023, I suggested they added a data lake in their solution to store the data because this storage would be useful for scaling up when data starts accumulating. It copes with unstructured and semi-structured data. I believe I have asked questions, raised the problem and tried my best to resolve the problem. Unfortunately when I reported problems to [Mr MJ] and sought support from [Mr MJ] for the problem that needs his level of connection and authority to resolve, I received little support from him. It seems that his conclusion is failure to own the problem and take responsibility.

- *[Mr MJ] singled me out from other staff and project development. For example, he had meetings with [NAME] or [NAME] regarding the progress of the vulnerability project without engaging me in discussion. He had meetings with [IC] and [NAME] to discuss the data governance of the vulnerability project without me. He introduced [NAME], who will cover the GIS architect work, to [NAME] and [NAME] without me. He has mentioned lots of project ideas but he has not actively engaged me into project discussion with the relevant departments. This has given me little clue what is going on and what needs to be developed. I asked for a project manager for the vulnerability project but he said the project was not ready and allocated the project manager to other projects. He has not given me responsibility in a clear instruction. My engagement in the air quality project was recommended by [RD]. My work on the vulnerability project was requested by Gurpreet and [AH]. The work required by [DW] was contacted by [DW] and fully explained by [DW]. Twitter work was asked by [NAME]. The work on digital twin and open data strategy were asked by Gurpreet. He gives me no clear project direction but after I have devised a technical solution he is keen to allocate tasks to other members without my engagement.*

- *[Mr MJ] shows little respect to women's work. At last Christmas' party in the town hall, he made a comment in a large group of women that women gave him troubles when I stood next to him.*

Figures

- *Project delivery and outcome from mobile network project.*

70. The document then included screen shots (including of instant messaging service exchanges between the Claimant and colleagues) which we do not reproduce here. A separate document [235] went on to say:

1 . It seems to me that [Mr MJ] as a manager has issues of understanding his role and responsibility with respect to comprehensive induction, staff member's health, well-beings and HR procedure. The communication related to these aspects are very poor too. e.g. He has not given me comprehensive induction on probation reviews. He has not given me and other staff members clear instruction on interview processes and requirements from HR. He allocated tasks to staff member I am managing without explaining to me the workload. I provided computer specs to him in early Jan but he abandoned those options. Until now we still have not received computers to carry out data processing work. He has not followed the probation procedure. He mixed up seasonal catchup and probation reviews. When I sought clarification from him, he could not give me guidance.! had a 1 0 minute review for a 5th month probation meeting and then got a notification letter.

2. "Everyone is a leader in Westminster City Council." I have not received necessary financial, technical and staffing support for developing projects. The staff time and resources are not in place to support project development. I was not able to develop work further.

His management style has prevented us to work collaboratively and supportively. [RD] showed [NAME] and me the work he has developed on data quality issue. I proposed some work on data quality for [NAME] to support [RD]. After [RD] reported it to [Mr MJ], it becomes work of David, [Mr MJ] and [IC].

3. There is lack of clarity and expectation on project delivery. With respect of the work for vulnerability and risk management, I have explained to [Mr MJ] a couple times on the complexity of the project, which is the reason for demanding staff time and resources. However, I have not received sufficient support from business analyst as they are occupied by other projects. I have asked for a project manager to deliver the project. Again, I have not received the project manager.

Some project expectations are unrealistic. For example, he asked [NAME] to develop a 5 year GIS roadmap in very short time period while we are still not clear whether the geoserver is in place.

71. On 12 May 2023 Mr MJ wrote to Mr Muctor as follows [236-237]:

[...]

Following are the timelines:

8th February: 2-days before [NAME] left, I asked Yan for a breakdown of program into phases and the outcomes for each phase. She was very rude and complained that there is no support and needs a project manager. After that, she never tried to contact me on teams. Only attended our team meetings.

14th March: Yan setup a call with Gurpreet and me to discuss project support. [Mr MJ] made multiple requests for project ID and delivery

manager.

3-month seasonal check-in (27th March 2023):

Was very rude on the call. Saying she has no support.

Did remind her that we discussed project support with Gurpreet as well and the Delivery team is the roadblock.

Blamed me for the people/organization structure in IBC. She emphasised that she's a manager and hasn't been able to manage.

When asked why she didn't raise it with me in our weekly connects till February, she couldn't answer.

Refused to acknowledge that I am as new as her in the organization and don't have full understanding of the systems and how they work.

Gave her evidence that the organization structure is still incorrect and its not in my hands to update it coz I don't have the rights and permissions.

Had meetings with [NAME] and HR to fix it

Use of words like 'control' in the discussion, implying I am trying to control Yan in anyway, which I felt was very unfair. I took a step back at that point to ensure I don't get blamed for misconduct.

Weekly calls:

No visibility on planning or progress or solution design and reasons of choosing a particular design.

The design was snowflake a few weeks ago and now is databricks. When asked why it's selected, there was a vague response on why it was the best design.

There is no visibility of what [RJ] has been doing.

I have requested presentations from [RJ] and Yan always says there is nothing to share. Till date, [RJ] hasn't presented in team meetings and has now stopped attending team meetings.

Yan stopped providing a written update every week for reporting purposes.

Feedback from peers:

22nd March 2023, quote: "I find that Yan often raises a problem but never owns the solution and doesn't understand the purpose of the champions network! She did this at the last Champions

Network meeting - I think she sees others as responsible when she flags something. Its good she has observations she just needs a part 2 to her thought process of what someone or she does with it".

9th May 2023, quote: 'It's hard work with her'.

6-month seasonal check-in (5th May 2023):

Was very rude on the call.

Informed her there is no progress on the project despite assigning the BA. Plan and requirements still not finalised.

Told me I didn't understand her role.

I reiterated that she hasn't shared the progress made by [RJ] and I have zero visibility on what [RJ] does.

She blamed me for not providing clarity in the vulnerable project.

When asked what clarity is required and why wasn't that request made earlier, she deflected saying '[Mr MJ], I had management responsibilities'.

Hung up on me after informed that probation will not be passed.

Key skills missing:

Project leadership: Not able to plan and breakdown the problem into smaller chunks. Asks team members to support her project without bringing visibility.

[NAME] supported her query some data without logging a jira ticket.

[NAME] and [NAME] supported address logging without a ticket.

Technical expertise: Can't say which ML/AI algorithms must be used for vulnerability study. What will be the approach once data is accessible.

Development and Planning: Apprentice are critical to strategic branding and growth of the council. Has not shared the development plan for the apprentice she's managing or gives visibility on the development stage.

Poor/Lack of communication: No 1-o-1 interaction (either on teams or meetings) from February 8th till April 13th. My messages on teams went unanswered.

That's the timeline and summary of events. Please let me know if you

have questions.

[...]

72. On 15 May 2023 Mr Muctor met with Mr MJ to discuss the Claimant's performance and Mr MJ's decision on the Claimant's probation. On 25 May 2023 Mr Muctor then had an appeal meeting with the Claimant [238]. The complaint about comments made by Mr MJ at a Christmas party were overlooked and not raised by the Claimant at the meeting. Mr Muctor also noted the following (further to another discussion with Mr MJ on the Claimant's performance) [245-247]:

*[Mr MJ] - Feedback on Yan's Performance and Appeal evidence gathering.
25 May 2023 08:42*

*Appeal evidence collection held online on the 15th of May with [Mr MJ]
[Mr MJ] was asked on the definition of toxic culture and he response stated that 'Yan interrupts in team meeting and there is concern at the lack of transparency around [RJ] (data apprentice)'*

- 1. Yan requested additional support and [NAME] was allocated in response*
- 2. There is a concerns on timelines and visibility on Yan's work. [Mr MJ] has gave feedback on a number of times to clarify scope by focusing on internal stakeholders*
- 3. There has been a lack engagement from Yan. This started with Yan was challenged on providing more information on the project and so she does not like to be challenged or questioned on progress.*

4. Probation process review:

On the 3month probation check point [Mr MJ] failed to be explicit on framing the probation meeting and there was a clack of clear message that if performance did not improve Yan would not pass her probation period.

1.

For 5th review, [Mr MJ] was advised by HR to provide feedback of the likely-hood of not passing probation period before the formal meeting so that Yan could prepare as required, but this was not adhered to.

Instead [Mr MJ] held one meeting in which he advised Yan that she has been unsuccessful.

2.

3. No written feedback provided to Yan. Due to lack of clarity on the implications of the feedback provided, the acknowledgement that the process was not formalised and no written feedback provided there has

been a failure in following the policy and process.

73. We accept Mr Muctor's evidence [GMWS90] that the Claimant and [Mr MJ] did not appear to him to "get on" and that was "a noticeable clash of personalities and some conflict over roles as the Claimant seemed to believe that she jointly managed the team with [Mr MJ]". This is consistent with the view expressed by the Claimant in her subsequent grievance that she should have been promoted to Mr MJ's role when he left [e.g. 496].

74. Mr Muctor then decided to grant the Claimant's appeal and extend the Claimant's probation period by 3 months. We accept that Mr Muctor extended the Claimant's probation because he considered that process had not been properly followed and the probation policy should have been adhered to more closely.

75. Mr Muctor wrote to the Claimant to confirm his decision on 13 June 2023 saying:

Confirmation of Extension of Probation

Further to our meeting on 7th June, I can confirm the decision to extend your probation period as due upholding your appeal but also considering the lack of information it has not been possible to assess performance.

Your probation will be extended for a period of 3 months and during this time I will continue to support you, so you have the opportunity to demonstrate your suitability for the post.

Please note that if at the end of your extended probation you still have not met the standards required for the post, you will be invited to attend a formal meeting which will consider your dismissal from the Council.

I will review your performance throughout this period but in the meantime please let me know if there is any specific help or support I can give you.

76. By doing so, Mr Muctor did not accept that the Claimant's performance since starting in her role had been satisfactory.

77. On 14 June 2023 the Claimant asked for clarification on what was meant by 'standards' [274]. Mr Muctor replied to say "[...] I want to agree a clear set of outcomes to give you the best chance of being successful. Off course we need to be a little flexible but think it is important for us to have transparency on objectives, expectations and outcomes. Lets connect on Monday to agree this – please send me a first draft of your current understanding of the outcomes and objectives and I will review and adjust accordingly."

78. Mr Muctor then sent the email chain on to HR to say "Fyi, I have extended Yan probation period based on the appeal hearing that [AH], Yvette and I attended. I held a follow meeting in which I communicated the result of the appeal and advised of the extension. Since [Mr MJ]'s resignation, I have held 121 with most of the team members now and I have observed performance concerns related to Yan and so I want to ensure that this probation period is managed well. Any advice you can provide me on the below would be useful."

Mr Muctor becomes the Claimant's line manager

79. In the meantime, on 5 June 2023, as we have said, Mr MJ had resigned from his post giving one week's notice [262]. This meant that Mr Muctor became the Claimant's direct line manager. We accept Mr Muctor's evidence that:

79.1 It was "*immediately clear*" to him that "*the team dynamic was suffering, and there was a need to understand the team's motivations and direction*".

79.2 He met regularly with the Claimant from then on he discussed with the Claimant her work, objectives, general performance and wider issues within the team. We accept that the Claimant in those meeting also had the opportunity to raise concerns with Mr Muctor.

79.3 Mr Muctor wanted to settle the team down before recruiting a replacement for Mr MJ and that although recruitment in this area takes a long time it was better to improve team cohesion first to ensure the team was supported day to day than to immediately focus on replacing Mr MJ. Ultimately Mr Muctor did not start the recruitment process as early as he might have because of the pressure of work. However, the delay gave him the benefit of time to reflect on lessons learnt.

80. On 16 June 2023 Mr Muctor wrote to the Claimant as follows [280]:

[...]

I am getting a lot on noise on people being confused on their roles and what you are asking the team to do.

Can you please hold of in charging forward with new commitments that are not officially on the workstack and in progress.

Also, not that your role is not just to manage a team to delivery project and services. There are things that you will also need to own and deliver.

81. The Claimant replied as follows [280]:

This is a legacy problem as the roles and the delivery have never been clearly explained. It is not clear what activities we will cover and the scope and the extent of the work we have defined to.

The lead for a task/project is not announced clearly, which leads to confusion on who leads what. Individual project might have set up clear goals and objectives. At strategic level, work such as data governance and BI governance is not well defined. They cannot be delivered as operational projects. The ongoing discussion on business flow has led people to think every project scope is at operational level.

I understand items I own and need to deliver including the strategic items. The current work stack is operational projects. There are works which are not operational by its strategic nature such as GIS governance, BI governance, data governance and Machine learning/AI charter. As [Mr MJ] has appointed the tasks to Anna and David on GIS

data roadmap and BI governance, I don't want to compete for the ownership of the items unless they have agreed. If you think there are other items which I should own, please clarify.

If you can clarify the extent of the work, not restricted to projects, we should consider, it will be great. Attached is the draft scope of the work for data team.

82. We accept Mr Muctor's evidence that he clarified this with the Claimant in their 1-2-1's [GMWS101].

Claimant's PDF/PDP

83. We accept Mr Muctor's evidence that in June 2023 he asked the Claimant to pull together a personal development plan or personal development framework (PDP/PDF). The Claimant sent it to Mr Muctor on 21 June 2023 [287 – 293]. We accept Mr Muctor's evidence that Claimant's plan, as regards the delivery objective, sought to develop solutions without breaking down how they would be achieved or following the usual processes for seeking approval (the governance and opportunity process form we describe above). Mr Muctor therefore gave her feedback that the plan needed to be focused on objectives and deliverables. The Claimant therefore updated her PDP in early July 2023 [340 – 346] and this was a tool against which Mr Muctor measured the Claimant's progress in their meetings (as noted above).
84. We accept Mr Muctor's evidence that unfortunately, despite breaking down the work and speaking to the Claimant about the correct process and what she should be prioritising, the Claimant did not adhere to the plan and continued to try to progress other work, which was not in the Workstack and for which resources had not been allocated. We accept Mr Muctor's evidence that he did not agree to work that was not in the Workstack being in the Claimant's PDP and that he told the Claimant that it was not core D&I work. Mr Muctor told the Claimant that if she wanted to work on matters that were not in the Workstack then she needed to follow the governance process to get them approved, otherwise they would not be allocated resources. The Claimant did not heed this guidance.

Training courses

85. It was agreed that the Claimant had a management role and we accept Mr Muctor's evidence that the Claimant had access to all the Respondent's online training resources, including those for People Leaders [157 – 159]. We accept his evidence that the Respondent's management programme is self-directed, so the Claimant was expected to take responsibility for her own training and to access the online training resources herself. We accept Mr Muctor's evidence that as regards in-person courses/workshops, staff can attend a course and there is no management approval required. Those with management responsibility are expected to complete the People Leaders' programme within 1 year and can decide themselves on the order in which they take the courses and when.
86. We accept Mr Muctor's evidence that the Claimant completed some of the

management programme [475] and attended other courses on 20 February 2023 [189] and 24 May 2023 [244]. We accept also that Mr Muctor arranged for the Claimant to have training on Governance with MD (Senior Solutions Architect) on 16 June 2023 to go through new business processes when the Claimant identified this as a training need.

87. We accept Mr Muctor's evidence that he did not receive or have to approve any training requests for the Claimant and that he would not have expected to. We further accept his evidence that the Claimant did not raise with him any management training needs or difficulties accessing training and there was no evidence of Mr Muctor 'blocking' the Claimant's access to training.

88. We also accept the Respondent's submission that:

88.1 the Claimant accepted in cross-examination that there is no documentary evidence to show that she requested access to the manager reporting and/or Personal Development Framework ('PDF') courses;

88.2 the Claimant submitted her PDF without complaining about lack of access to the PDF course [340].

7 July 2023 workshop

89. Mr MJ having left and Mr Muctor having met with team members, Mr Muctor realised that overall team morale was very low and that there were issues that needed to be addressed. He therefore decided to arrange a workshop to try to overcome this. Mr Muctor asked the Claimant to help organise the workshop. The following email exchanges followed (C being the Claimant and GM being Mr Muctor) [331-334]:

4 July 2023 C to GM

Subject: business scope for data service

[...]

Here are the last two documents for discussion in the workshop. Do they look OK for now?

5 July 2023 GM to C and others including EK

Generally, I agree that we need to have a defined service catalogue of the services provided by the team. But some of the accountability I would like to review...

After the retro – what worked well and has not, I set our our annual objectives and the link to our strategic D&I OKRs. We will be group project activities into product roadmap, and I will introduce the concept of product lines.

These are the key areas of focus:

Environment Product line

*AQ and
Emissions,*

Report IT Product line

*noise,
waste and
pot holes*

Housing Data Products

*Repairs
Complaints,
Assets,
Residents.*

*Data foundations; Governance, Data Asset Catalogues, Frameworks,
Standards, Principles and Infrastructure,*

Ways of working: Setting up JIRA and confluence etc.

6 July 2023 C to GM and others including EK

Suggestions for tomorrow's items to clarify who leads the discussion

- 1. Roles and responsibilities – Yan(25 minutes)*
- 2. Strength, weakness and issues – [EK](45 minutes)*
- 3. Project stack and product roadmap – Gurpreet (70 minutes)*
- 4. Ways of working: Confluence, JIRA, Linking Techhub to JIRA,
Sharepoint sites --- [MD] (40 minutes)*

Do you have any slides? We can put them together.

[...]

6 July 2023 GM to C and others including EK

*The meeting is in from 9.30 but the agenda stated starting at 11! Need to
change this to start 10 latest.*

Looking at the agenda, I suggest we amend this to.

10:00 -- 12:15

- 1. Objectives for the day – Gurpreet; 5mins*

2. *Share a picture and tell your story (max 5 minutes). - Yan*
3. *Celebrating and recognising key achievements to date – 10mins - Yan*
4. *Retrospective– [MD] to lead – 75mins (including 10min break)*
 - a. *SWOT – strengths and weaknesses, opportunities, and treats.*
 - b. *TOWS – solutions*
5. *Data Team Vision and objectives – Me - 30mins*

12:15 – 13:00

6. *Lunch break*

13:15 -15:30 (15 minutes break)

7. *Aligning projects and activities to objectives - group exercise – 60mins*
8. *The ways of working: organisational expectation; 45mins*
 1. *Business workflows: old model and new model.*
 2. *how to make communication productive.*
 3. *Roles and responsibilities: clarify what we do.*
3. *Next Steps/Actions recap. – Yan – 15mins*

15.30 – Social Networking

– need someone to lead 7 and 8?

6 July 2023 EK replied:

Hi all

The agenda is sounding good, thanks Yan.

I'm happy to lead 7,8.

I suggest a slight amendment to the times (i.e. remove the 15min break straight after lunch to (and account for the missing 15mins in 7,8) to give an extra 30mins to 7 which I think is critical to address to make it clear where our focus should go as a team):

[...]

6 July 2023 C to GM, EK and others

I just got a draft PPT done and will add the items into the PPT.

[...]

90. We accept Mr Muctor's evidence that whilst there was an agenda for this meeting it was just a guide, the retrospective was focused on identifying the issues and problems and then identifying solutions and options to overcome the challenges and was an opportunity for the team to openly talk and propose solutions. Mr Muctor had put the Claimant down to lead particular sessions and asked for volunteers for items 7 and 8 which prompted EK to put himself forward. The Claimant did not do so and did not ask to lead on more or different topics. We accept Mr Muctor's evidence that shortly before the workshop, he asked EK to talk to the team about how work was managed and recorded and the integration of both the operational and project work of the team on one system. Mr Muctor asked EK to do so as he had started a document which detailed all the projects team members were working on, and it was a baseline to review and manage. Mr Muctor did not tell the Claimant about this change in advance of the workshop as it was a last minute addition and the agenda was flexible.
91. The workshop achieved its objective of defining a set of actions assigned to team members and improving morale. Ten days after the workshop the Claimant sent the following email [372 – 374]:

Hi, all:

Thanks for attending the workshop on 07 July 2023. It was lovely to see you all!

Here is the minute for the workshop. We make an incredible start as a team and are changing WCC through our skills! Despite the achievement, the team has hurdles before we can move forward. We have spent a big chunk of time reviewing the problems. The outcomes of SWOT/TOWS highlight the solutions to turn weakness and threats into opportunities.

We have a few actions to complete. Attached the spreadsheet has some more information about the vision, product line and technology and the approach to assess the project opportunities, which are under review. In Sheet 1 under the SWOT/TOWS tables, it lists the departmental deliverables and goals related to Data team's activities. Gurpreet has explained how the concept of product line works last week. Can you have a thought about how you can develop your projects under the product line to meet those goals and feed them into tomorrow's workshop?

This will help us to develop the areas of the work, prioritise the projects and achieve the goals.

Many thanks!

92. The Claimant alleges as part of her claim that Mr Muctor allowed EK "to lead all projects and the team including the Smart City Operating system, which is a type of data ecosystem". It was for team members to proactively take work from the Workstack and we accept Mr Muctor's evidence that EK was not leading 'all

projects and the team'. EK took the initiative to pull together the first iteration of the Workstack, but he did not manage all those projects. This was delegated, by Mr Muctor, to LN as delivery manager. Mr Muctor accepted that the Claimant had fewer projects than EK, but this was due to her not picking up work from the Workstack, which she should have been doing. We accept Mr Muctor's evidence that EK did not lead on the smart city OS and was not part of the team that developed the air quality solution – the first product created on the Smart City Operating System.

18 July 2023 discussion of BI governance work

93. The Claimant alleged in her witness statement [CWS64] that *"on 18 July 2023, [EK] started another meeting to continue the allocation of projects. I noticed that he put his name against every project since last meeting. Other people had little opportunities to lead on a project. This was against WCC's value "everyone is lead". I intervened to ask him making other people to lead on projects. He was not willing and insisted he led on everything. We ended up arguing about the project ownership. The whole team was watching us arguing about the project ownership. I was very upset in that day. In the night because of the pressure caused by the argument I was not able to sleep."*
94. We accept Mr Muctor's evidence that it was in fact the Claimant that arranged a meeting with the Data Team on 18 July 2023 to discuss and seek feedback on Business Intelligence (BI) Governance. It was the Claimant and Mr Muctor that JB contacted on 12 July 2023 with a query about the meeting [352]. We were not taken to any evidence of the Claimant at the time raising concerns about the discussion at the meeting or EK's conduct at the meeting. We accept Mr Muctor's evidence that there was an open dialogue in the meeting and people were speaking up at different points during the meeting. We accept his evidence that he did not interrupt the Claimant's work during this meeting, either deliberately or otherwise. We accept his evidence that DDM (Data Analyst) was responsible for this area of work (as the platform power BI lead) [352-353]. We note here that in the related correspondence the role of IC was acknowledged and that IC, in common with the Claimant, is a Chinese woman.

24 July 2023 –Data Architect interview panel

95. Mr Muctor agreed that the Claimant was appointed to the recruitment panel for a Data Architect role in July 2023. We accept his evidence that he was not involved in the decision to involve the Claimant and gave no instruction to MD to include her.
96. Mr Muctor gave an entirely probable explanation, which we accept, for the subsequent removal of the Claimant from the interview panel being that, in previous rounds of recruitment for the Data Architect role (in 2022), a Business Analyst (AA) sat on the interview panel, and so Mr Muctor suggested that AA would be the more appropriate person to sit on the panel on this occasion too. AA had been employed by the Respondent for seven years and was best placed to 'test culture', and put a lens on the type of person the Respondent should recruit. AA also had greater understanding of the Respondent's recruitment process. Her inclusion provided consistency because the panels would then be the same. Mr

Muctor's decision was aimed at ensuring continuity and fairness in the selection process.

97. The Claimant suggested that [RD] should have been removed from the panel instead. However, we accept Mr Muctor's evidence that [RD] was a Data Engineer and the panel benefitted from having a data engineer when it came to technical assessment of the candidate.

28 July 2023 – Claimant's Citizenview proposal

98. In an email to LN (Delivery Manager) the Claimant said [388]:

Now I am working on the housing system to move 'a single view of the citizen' forward. The proposal of Use case 'A single view of the citizen vulnerability' is attached. This proposal is related to our previous conversation on MDM. The first three data system we will test are LLPG from UNIFORM, MRI from housing and Adult/Children Mosaic.

I have asked Gurpreet to allocate a delivery manager for the project of Developing a data platform for resilient city.

99. Attached to the email was a document with the title "A single view of citizen vulnerability for public service delivery and operational intervention" [391-406]. The Claimant focused on this in her cross-examination of Mr Muctor. We accept his evidence that he did not use the proposal as it had no clear goal, was ambiguous in scope, and had no clear understanding of why, what, and when to deliver. It was a clear example of the Claimant over complicating and overreaching in the proposal for a project. We accept Mr Muctor's evidence that he was also concerned that Master Data Management (MDM) was a specific project for housing, and by linking the project, risk would have increased considerably due to scope creep. The team could not progress the project in the way proposed by the Claimant and he told the Claimant this and suggested that the work needed to be simplified. We accept Mr Muctor's evidence that he did not criticise the proposal to DH or any other potential stakeholders.
100. Subsequently, on 24 August 2023, Mr Muctor sent the Claimant an email which we refer to below again raising concern about focus moving off D&I core work and explaining that he wanted to restart the MDM project with LN and ensure that the project was not extended to other parts of the Council (because of the risk of complications in implementation) [430].

Late July/early August – Introduction of the Claimant to LN

101. The Claimant complains that on or around late July / early August 2023, Mr Muctor introduced the Claimant to LN without giving the Claimant any clear instructions (whereas he provided clear instructions to EK and to [RD]). We accept the Respondent's submissions that the Claimant said in cross-examination that she was introduced to LN 'in a casual way'.
102. On 2 August 2023 LN sent the following email [389-390]:

Subject: Please respond: Resource planning for the Data team

[...]

I'm looking at the work that's coming into the Data team space. As the Delivery Manager I need to have a view about who is working on what and, I need to resource plan to ensure that a project has the right people and resources available at the right time. I know [EK] has captured some of this info already, but I need to pack the details out a little more to get a complete view.

For each of your projects, can you please tell me:

- 1. What you're currently working on – project name*
- 2. How much work is left to do on the project 20%, 80% etc or don't you know?*
- 3. Who is running the project – Project or Delivery Manager's name?*
- 4. Please share anything else you think might be useful to help me keep track of everything.*

If you could let me have the information by Monday 7th August at the latest, please.

103. LN was therefore clear to the Claimant what she needed. The Claimant was not a junior employee and there should have been no need for Mr Muctor to do more in introducing the Claimant to LN. There was no evidence that EK and RD were treated any differently.
104. We accept Mr Muctor's evidence that he was on leave from 21 July to 7 August 2023 and had got LN involved in direct response to a request by the Claimant to which the Claimant herself referred [388].

August 2023 - MDM meeting cancellation

105. On 16 August 2023 JB sent an email to MD and Mr Muctor with the Claimant and others on copy with subject "Sandbox and data architecture" and including the following comment:

"Off the back of this work, there seems to be some confusion/disconnect about what I've done/am doing. I've had a few msg/email exchanges with [Claimant] about the data lake, data architecture, data cataloguing, MDM etc that I'm proposing. [Claimant] has also engaged with [KOH] and [VS] regarding this. These topics have been discussed at various team meetings, and I completely agree we need the data architecture, cataloguing, MDM etc. However, I'm not aware of us even having a concise list of data assets yet. I had a discussion with [KOH] earlier, he was essentially wondering about where the data in coming from, the format etc. so he can pick it up from an integration architects' perspective. [KOH] was under the impression that I was leading on the design of a data lake."

106. The Claimant replied on 21 August 2023 [828]:

[RD] and [DL] are working on housing MDM as a starting point of MDM solution across the organisation. Data cataloguing is part of MDM solution. Ivy is working on it. They are part of data governance project, which started months ago already. I initiated a meeting with [KOH], Emma, [VS] and [DL] a couple weeks ago to make sure they are on the same page of technical development regarding housing and MDM. MDM solution is the way to support a single view of citizens under CRM system. [KOH] and Emma will develop a single view of citizens. [RD] is assessing the suitable CRM systems for golden records/a single view of citizens. Vijay is the data architect who will work on developing the architecture mapping for use case projects on smart city programme and housing associated with MDM. [KOH] is right. There is no comprehensive list of data source system so far. The information is pretty fragmented. Previous work stopped at the point of identifying business models and had not progressed to logical data model for unified view of business models. I am working on the draft data source systems for data lake and their data volume. These data sources can be from the key databases in the council as well as open data sources and IoT for smart city OS, e.g. footfall and spend, CONFIRM, UNIFROM etc. ViJay will help to assess whether it is reasonable to deploy data lake. There seems a big question regarding the design of the data lake and data catalogue as Azure's data lake doesn't come with data cataloguing. Especially, we need to know how data users should be managed according to the sensitivity of the data sources. How should we reflect such nature in data cataloguing through tagging? Also, it is not clear what types of records should go under bronze, silver and gold. Therefore, I contacted you regarding data lake associated with data architecture, MDM and data cataloguing, in the hope to bring you on the same page of technical development as others. It will be really helpful if you can contribute to the list of data source systems, for example, the size of CONFIRM database.

107. DM replied noting, amongst other things, the need to keep LN involved. Mr Muctor then said on 21 August 2023 [826]:

Folks,

Reading the email chain even I am confused.

Couple of things we need to separate out.

1. footfall, expenditure, and emissions.

a. These are currently supported by tactical solution being developed due to timelines but

b. I expect we will have two phases to ensure we are using the right solutions.

[[RD]], is creating a framework and, and review with the team next week.

This will form phase 2 of the solution.

c. I do not think the design has been presented at the TDF? Both phases need to be in the design for it to be signed off. We need to adhere to our architecture governance processes, [DM] can you please pick this up with support from an SA?

2. Housing Data governance – *[LN] is leading the scope and planning for this work. As part of the project plan there will be an activity to map out the data in the systems. We have agreed to separate MDM from Housing Data project due to the complexity of managing both.*

3. MDM - *[LN] is creating a new Project opportunity to manage the selection and implementation of the MDM solution. Once it has been allocated a project number, the project will be re-started with Procurement support. Phase 1 of this project will be for automating housing master data quality.*

There is a lot of complexity on the architecture of the data platform especially considering the number of capability gaps we have and multitude of solutions to address them. — this needs to form part of the data and tech standards work. [JB] if you have done some work on this, feel free to share.

108. On 24 August 2023, after initiating email correspondence with him on 15 August 2023, the Claimant sent the following email to SR with Mr Muctor on copy [430]:

Subject: RE: A single view of location and ECM zero budgeting

[...]

We encounter similar type of issues for identifying records of vulnerable people within the borough. These records are important for establishing evidence for fuel poverty and climate change such as heat waves and flooding, in order to support renewable energy development and cost of living management. They could be associated to the remit of your work as well.

It will be great if the members can reach a consensus on how we should better manage the information in WCC for speedy decision making. I look forward to your update.

109. As we refer to above this prompted Mr Muctor, on 24 August 2023, to send the Claimant the following email [430]:

The D&I service has two cabinet members are different to ECM and so I do not know why you are reaching out to Stuart on this...

I am concerned with the amount of coverstations we start that are a/disconnected with stakeholder or members of our team and b/ time and energy spent on things that do not move forward and

c/not aligned with the D&I core areas of work.

MDM is a project that I would like Lyn to re-start again because of a number of issues. This means we are back in the scoping phase and I will take into account the work done to date by you and other team members. It is important to note that although I have separated it out from Housing Data Management so that it is less complicated to manage, phase 1 of MDM will still be on Housing data set. This has been agreed with the S&I team as well.

If we mix the implementation of MDM with a lot of other areas the risk is that it becomes too complicated to implement.

110. Mr Muctor agreed that he asked the Claimant to cancel a meeting on MDM. We accept that this was because he was concerned that the Claimant had requested footfall and expenditure data (how many people visit the borough and expenditure related to how much they spend) from the Council's data warehouse and was trying to link this data to master data work (usually data related to buildings or customers/residents). We accept that footfall/expenditure had nothing to do with master data work and therefore it did not make sense to link the two projects together. We accept that Mr Muctor was also concerned that the Claimant had engaged with stakeholders from Highways, who were not a part of the original footfall and expenditure project, which had added confusion and increased the project risks. We also took account of Mr Muctor's notes at [435]. He suggested that the Claimant should cancel the meeting and refocus her work in this area.
111. Mr Muctor did not recall if/when he asked EK to lead this project or if he was already engaged in the project. However, we accept that his decisions were based on the lack of progress on the project and his concerns and complexity being added by the Claimant.

4 September 2023 Probation review meeting [442]

112. On 4 September 2023 Mr Muctor held the Claimant's extended probation review meeting. The purpose was to formally discuss her performance and progress and reach a decision on whether she should be confirmed in her role. The Claimant attended with a workplace colleague. Ms Clarke attended from the Respondent's HR team. At the meeting Mr Muctor explained the concerns he had about the Claimant's performance. We accept his evidence at GMWS102-103. Mr Muctor made notes during and following the meeting when he was considering his decision [450]. At the meeting DC sought to explain that the presentation that the Claimant had given at her interview did not form a plan of work for her role, but was to test suitability for the role.
113. On the morning of the meeting the Claimant sent the following email addressed to NM (HR Business Partner for D&I) and copied to SD (HR Business Partner) and Ms Clarke [456] attaching slides [510-521]:

Subject: RE: HR representative for probationary review

[...]

I have been informed that you are the HR partner in D&I.

I would like to raise a concern I have during my employment in WCC. Attached is the work I have done during my probation. In the end of the slides, I have added my concerns. Some of them have been mentioned in my previous probation review and some of them have been discussed in my seasonal catch-up.

Daphne has indicated she will be in my probation review. The slides will cover what I will report

during my review. I wish to take this opportunity to discuss the concerns I have if that is OK.

[...]

114. We make further findings of fact about this meeting and the slides that the Claimant attached to her email in our analysis and conclusions. The slide at [518] of the bundle includes the following text:

Concerns

1 . My interview against current allocation of management responsibility

My interview questions:

- The Data Sector is an emergent one and changing daily. The "professional" data roles can be grouped into a number of families (e.g. Science, Engineering, Governance, Architecture etc) - these resources may be helpful to review (Resource 1, Resource*

2, Resource 3).

- The Data Scientist at Westminster is not just a technical expert, they are also a leader. The postholder will lead the entire Data Science job family. This includes building new capabilities and recruiting and leading the right people with the skills and mindset required for a modern ambitious organisation. These capabilities and roles include geographic (GIS), analysis and custodianship.*

- This is a new team needing to be created from scratch and there is an additional complexity to manage as Westminster splits from the shared IT/Data team it has with Kensington and Chelsea. The postholder will be building a new service and transitioning some elements of an existing service.*

- In no more than 10 minutes, given the context above, can you present to us your proposed approach? What are the main challenges and opportunities you will need to deal with and how do you propose to do so?*

Highlight 1 : I had to fight with Manish to get the management

responsibility for GIS analyst, LLPG curator and data analyst after Gurpreet announced the team structure.

115. The slide at [519] of the bundle says (amongst other things):

[...]

Highlight 3: While Manish was in the post, he would by-pass me entirely and discuss issues which related to my area of the business with subordinate male colleagues. After Manish has resigned, Gurpreet is keen to promote Ethan who has the same job title as me. My role and responsibility have never been formally announced. Neither do I have been introduced to the necessary resources and contacts to lead the team. I feel discriminated.

Highlight 4: The unclear role and responsibility caused a huge problem to manage the situation. Staff is struggling to understand who they should listen to. Anna has emailed to ask whether the team belong to me or Ethan or Lyn(delivery manager). Ivy was confused why I was involved in data cataloguing. Some other people hold a view on racism and discrimination.

116. The slide at [521] of the bundle says:

Conclusion

I feel since I started the job in WCC, I have been discriminated on the basis of gender and race. I have not been given the necessary resources to deliver. I am not able to deliver in a full capacity despite the interview outcomes has been accepted.

117. The next day the Claimant wrote to Ms Clarke (cc'ing SD and MN) [456]:

[...]

In the meeting, I pointed that in the interview I had been asked a managerial question to develop a team but did not receive the necessary resource to deliver. I noted that you explained that the interview questions were for testing candidates' way of thinking and they were the same for all. I assume you mean the interview questions are the same for data scientist.

Yvette did suggest reviewing my interview notes before my last probationary review. A key concern in last probationary review was the management responsibility not aligning with what Gurpreet has shown to the department which causes problems to deliver.

Yvette has interviewed me and [EK]. You can check with her whether they were the same.

From what I had learned from her and [EK], I am pretty sure the interview questions were not the same.

118. Mr Muctor's notes from and following the meeting on 4 September 2023 record [450-451]:

[...]

a/ Lack of acknowledgement of your own accountability and responsibility for why she has not made sufficient progress.

b/ A central theme to your lack of delivery was highlighted as a lack of team and line management and there for control of resources. However, the fact is that there are three employees that you directly line manage, as reflected on IBC.

C/The work that you have listed is not aligned with the D&I service objectives, and there are issues in Canvas more work through discussions with the ramification that it compounds the demand pressures and expectation of stakeholders without understanding that team members as working on approved and committed projects. Daphne asked a question regarding if this is authorised work and I replied 'no'.

d/ There is a disconnect with your expectation on what you want the role entail and the council's need, objectives standards and ways of working. You referred to who leads the team and appear to have aspirations that it is you, but this responsibility sits with the head of data position that I am currently covering until a new person is recruited. Made clear why this is not correct, and it is part of the selection process. Clear misalignment on the expectation of the role. Believes that her role was akin to the Head of data because of the ppt topic.

e/ It was made clear that during the interview process, the presentation topic you were asked to present was to understand your experience and skill better. It appears that you assumed that the council would adjust the structure to reflect your thoughts. However, this expectation is misaligned with the organisational structures that we have in place.

Made clear the issues of not following the department processes and excuses of not understanding or having visibility were not valid as other team members do follow it.

Probation meeting notes

- Yan raised an issue that the need for progress results from a lack of line management. However, the fact is that there are three employees that you directly line manage as reflected on IBC*

- Raised the point about the organisational structure you presented as part of the selection process. Made clear why this is not correct, and it is part of the selection process. Clear misalignment on expectation of the role. Believes that her role was akin to the Head of data because of the ppt topic.*

- No acknowledgement of her accountability and responsibility for why*

she has not made sufficient progress.

- *Evidence of work presented is not on the D&I official workstack and this is a core issue that she has continued to not address. Daphne asked a question regarding if this is authorised work and I replied 'no'.*

- *Made clear the issues of not following the department processes and excuses of not understanding or having visibility were not valid as other team members do follow it.*

119. We accept Mr Muctor's evidence on the steps he took following the meeting with the Claimant. On 15 September he notified the Claimant of his decision to terminate her employment [472 - 474]. The Claimant was contractually entitled to one week's notice but Mr Muctor gave her three week's notice (ending on 6 October 2023).

120. Mr Muctor's outcome letter recorded:

This decision has been made because you have not made sufficient progress in the following areas:

- *You have shown a resistance to change and inability to grasp the D&I established governance and management processes, despite me clarifying with you what these were at various interventions, resulting in a lack of output, project delivery and lack of contribution in your assigned role as a data scientist to the departments work.*

- *As a result of your leadership and direction, you routinely redirected the team to undertake work outside the scope of the team's role/departmental priorities. Consequently, various team members have spent time on initiatives that have taken attention away from set priorities.*

- *There has been consistent issue with poor communication skills, leading to misunderstandings or disruptions both within your team and peers. Feedback from team members illustrates that you have failed to set any goal or objectives and that you consistently ask team members to work on projects only to change your mind leading to wasted effort.*

- *There is a disconnect between personal career goals and the role you are in as evidenced by working on initiatives that you cultivate but are outside the department's governance process and approved list of projects. This has resulted in your inability to effectively contribute to any of the data projects that are in delivery.*

- *Finally, throughout the probation period, even though you have often blamed others for the reason why you have not contributed to the team objectives, there has been no acknowledgement of your accountability and responsibility for why you have not made sufficient in any of your area of work.*

From the review process and the feedback provided, I have concluded

that your expectations of the role's responsibilities and the council's needs, objectives, standards, and ways of working have not been adhered to leading to an unsuccessful probation.

You will receive three weeks' notice and your notice period is effective from date of this letter. You will be paid for the period of your notice, and you will not be required to come to work during the notice period. Your last day of service with Westminster City Council will be 06th Oct 2023.

You have the right to appeal against this decision within 5 working days of receipt of this letter. Appeals should be addressed in writing to your Senior Leadership Team Member, stating the grounds for your appeal.

121. Mr Muctor had to remind the Claimant several times that she was not required to work during her notice period and the fact that she was caused confusion and made colleagues uncomfortable [526 – 532, 548].
122. On 21 September 2023, the Claimant appealed the decision to dismiss her [554 – 565] and Mr Muctor's line manager, AH (Chief Digital and Innovation Officer), was asked to consider the appeal independently of Mr Muctor. The Claimant's appeal letter read as follows and attached a further set of comments which we do not record here:

I am writing to you regarding the recent decision on my extended probation on Friday 15 September. I received a letter of notification from Gurpreet to terminate my contract.

I am appealing this decision because I feel that Gurpreet has made a biased decision. In my nine-month probation, I feel Gurpreet has created a complex environment for me to manage staff. He shows poor communications to clarify staff's roles and responsibilities based on interview outcomes. He lacks vision on data business but is keen on buzz words without careful consideration of costs, skills and risks. He shows poor awareness of the data environment the council is in to develop data work. He takes my credits without engaging me in the relevant discussion. He ignores my achievements but exaggerates occasion problem. He ignores the work we have agreed to deliver under 7 theme framework and pays attention to the work we have not agreed to deliver. He discriminated against me and gave more opportunities to a worker who is a different race and gender. He treated me in a less favourable way. These attitudes and behaviour have affected my performance, outcomes and mental health substantially. I have provided my response and evidence against the grounds he provides for his decision on dismissal in the attached letter.

In light of my grounds of appeal, I request that you reconsider this decision.

I greatly appreciate you taking the time for reviewing my appeal.

123. AH (Chief Digital and Innovation Officer) met with the Claimant to discuss her appeal on 17 October 2023 and he issued his decision, upholding the Claimant's

dismissal, on 18 October 2023 [581 – 582]. He did not agree that the Claimant had suffered discrimination.

6 September 2023 – grievance

124. The Claimant submitted a formal written grievance to SH of HR alleging discrimination on 6 September 2023. This was of course before Mr Muctor had informed the Claimant of his decision. The grievance read [461-463]:

Dear Satchi,

I am writing to raise a formal grievance about unreasonable and unlawful treatment that I have been subjected to.

My complaint is about less favourable treatment/race discrimination/sex discrimination that I have been subjected to. I would like you to investigate these allegations as a grievance under WCC's grievance policy. I would also like you, as my employer, to take appropriate and prompt action to stop the behaviour complained of and to remedy it. The name of the perpetrator is Gurpreet Muctor, Chief Architecture and Data Officer at D&I.

My complaint is set out below, where I describe the events that constitute less favourable treatment/race discrimination/sex discrimination.

1. I am employed as data scientist. My work and role involve managing a number of staff members and developing technical solutions for service departments.

2. During my 9 month probationary period, I have suffered the following treatments.

1. During my extended probation period, my manager put me into disadvantageous place and blocked my access to resources. He inclined to promote male workers since I started my probation. He would by-pass me issues, opportunities, resources and stakeholder contacts which are related to my area of business. For example, he introduced me to delivery manager without giving me any instruction and explaining what I need to do but he gave clear instruction to my previous manager and the data scientist [EK] as well as data engineer [RD]. He instructed Martyn to send me an appointment of recruitment and then removed me with someone else. During extended probation, he deliberately interrupted my work and reluctantly gave me the access to the contacts and resources compared to data scientist [EK]. For example, he excluded me from several key meetings to understand the situation in transitional stage after the previous manager resigned. He stopped me to develop BI governance work but was very keen to make arrangement for [EK] to lead all projects and the team. He was actively promoting [EK]'s responsibilities in various meetings but was never keen to support me in my first six months when I encountered management problem.

2. He agreed the work written in my personal development plan and then told me the work didn't fit into D&I core work after 9 months development and there was no resource for it.

3. He plays favouritism to his favourable people and holds biased opinion if a suggestion and a complaint is against his will. For example, after I rejected his initiative related to housing statistical modelling due to the approach not working he became reluctant to collaborate and share stakeholder resources. He created opportunities for his favourite one and promoted them through providing access to the resources and stakeholder contacts. This has made me not able to develop work with wider stakeholders and put me in a situation that I can be passed over a promotion. When I ran a workshop for him in July, he disrupted the meeting organisation a few times without notifying me changes. He ignored what we had agreed in the meeting. Despite my interview question is a managerial question and he has arranged staff under me in the structure map announced in D&I departmental meeting, he has not made the management line clear enough in IBC system. He has made me to fight for the managing responsibilities of these people for a long time. Because of unclear management line I have not got access and training like any other managers in WCC.

4. During my recent probation review he provided HR false information regarding the interview notes I have requested as this is related to the structure he has proposed. He claimed that the interview questions were the same for everyone. He has misled HR.

5. In my first probation review I have raised concerns of discrimination and unfair treatment, plus lack of resources to deliver. He never paid attention to these problems despite the point on lack of resources has been highlighted in my personal development plan.

6. He took my credits without acknowledging my efforts. For example, he took my proposal to negotiate with stakeholders without engaging me and then criticised my proposal. For some projects, after I have put in efforts into bringing technical staff on the same page he ignored my efforts.

7. Attached is the previous discussion for my first probation review with [AH], [NAME] and Gurpreet. It has indicated problems of discrimination and unfair treatment under the management of [Mr MJ] and Gurpreet.

These recurring issues have caused me suffering from anxiety and depression, which has a substantial adverse effect on my day to day activities. It impacts on my cognitive abilities, thought processes and memory function. It happened in May, again in August and September.

3. The conduct described above was unwanted and related to my sex and race. The conduct had the effect of violating my dignity and created a degrading and offensive environment for me. It damages my confidence. It damages my career reputation.

4. *I have evidence in the form of previous probation appeal and my recent probation review together with my personal development plan agreed by Gurpreet.*

5. *I would like the following action to be taken:*

i. *A grievance meeting to be held as soon as possible – please send to me a meeting invite and a copy of the Company’s grievance policy.*

ii. *An investigation to take place into the events that occurred and a finding to be made in relation to my complaint.*

Please let me know when I will receive an invitation to a meeting to discuss my grievance and confirm the next steps in the process. I would like to be accompanied at the meeting and will let you know who my chosen companion is when I receive the invitation to the meeting.

Yours sincerely,

125. With this email the Claimant submitted a grievance form including other information in support of her grievance. In the grievance form she ticked the race and sex discrimination boxes and said:

WHAT IS THE IMPACT OF THESE ACTION(S) ON YOU?

I have suffered from anxiety and depression, which has substantial adverse effect on my day to day activities. It impacts on my cognitive abilities, thought processes and memory functions. It damages my confidence. It violates my dignity and creates a degrading and offensive environment for me.

OUTCOME / REDRESS SOUGHT:

1) Promotion to the position I deserve

2) Settlement agreement or employment tribunal as I don’t feel I am working in a healthy environment and feel difficult to continue this employment (reasons have been addressed in the letter).

126. We accept [GMWS22] that the Claimant’s grievance was shared with AH and that DW (Head of Smart Cities) investigated the grievance. We further accept that Mr Muctor was not aware of the grievance. He became aware of it on 27 September 2023 just before he met DW that day as part of DW’s investigation [612-614]. Mr Muctor had no other involvement with the grievance.

127. The notes of the Claimant’s grievance meeting with DW, held on 26 September 2023, were provided to us [607 – 611]. They record amongst other things:

Yan shared that she felt she was victim of racial discrimination and gender discrimination by [Mr MJ] and Gurpreet. However as Gurpreet is responsible for [Mr MJ] he is also responsible for the racial and gender

discrimination.

128. DW provided his outcome on the grievance on 20 October 2023 [583 – 620] which he did not uphold.

Salary for the period 1 -6 October 2023 and holiday pay

129. On 27 September 2023, having taken the decision to terminate the Claimant's employment, Mr Muctor had to complete the Claimant's leaver form on the Respondent's HR system (which we have said is referred to as IBC). We accept that he was not familiar with the procedure and that he said the Claimant's last day of service was 15 September 2023 being the last day that the Claimant was required to work and the day on which his decision was communicated to her. This was an error and what he should have done is insert 6 October (which he had communicated to the Claimant would be her last day). We do not consider it probable, taking into account our wider findings in this claim, that having agreed to give the Claimant an extension to her probation period and then more than her contractual entitlement to notice (which he had put in writing to her), he would then seek to deny her pay for that same notice period.
130. Hampshire County Council (HCC) provides HR services to the Respondent and, on 25 October 2023, Mr Muctor received an email from them telling him that the Claimant had been overpaid and that an invoice had been raised to recover this from the Claimant [785]. Mr Muctor quickly advised HCC of his error and that the Claimant had not in fact been overpaid [627 and 786]. The Claimant received the corresponding shortfall in her wages on 15 November 2023.
131. We accept Ms Kubascikova's evidence that the Respondent uses the method of calculation set out at page 44 of the Purple Book i.e. "*For each odd day (including Sunday), divide the monthly sum by the number of days in the particular month.*". This means that the correct method of calculation of the pay owed to the Claimant for the period 1-6 October 2023 was to divide her monthly pay by 31 (there being 31 days in October) and then multiply that by 6. This is what the Respondent paid the Claimant [ZKWS21]: she was paid £969.43 (£5,008.75 / 31 x 6).
132. As regards payment for the Claimant's accrued but untaken holiday at the termination date, we accept Mr Muctor's explanation [GMWS114-116] that when completing the Claimant's leaver form, he did not request payment for the Claimant's unused annual leave because he did not realise he had specifically to do so in order for the Claimant to be paid it. In November 2023 he was contacted by a colleague from HR who explained his error and with her guidance he corrected it and the Claimant received payment on 15 November 2023. This was another error on the part of Mr Muctor which was unrelated to any protected acts and unrelated to the Claimant's race and sex. Mr Muctor was simply unfamiliar with the process, made a mistake and corrected it when it was drawn to his attention.

Backdated pay for pay award - 1 April 2023 to 30 August 2023

133. We accept Ms Kubascikova's clear evidence that if an employee leaves the Respondent's employment and subsequently pay is increased through a pay

award and backdated to cover a previous period during which they were in fact an employee, they are not automatically entitled to that back pay. All former employees in that position have to apply to the Respondent to be paid the back pay. The Claimant is in this position. The Respondent accepts that the Claimant is entitled to £980 in respect of back pay for the period 1 April 2023 to 30 August 2023 and had explained to the Claimant how she can claim it (in the same way any former employee would need to claim it) [81, 73 and 71].

134. The reason the Claimant is not entitled to such back pay for the period between 31 August and 6 October 2023 is that she has already been paid it. We accept that Ms Kubascikova cannot be sure of the reason for this but consider that the explanation that she has provided is entirely probable [ZKWS23]. The Respondent's payroll system, in January 2024, automatically triggered payment of the arrears from the Pay Award for her September and October 2023 salary because the Claimant's record was reinstated in November 2023, for the last day of service to be amended.

THE LAW

Discrimination under the EqA

135. The Equality Act 2010 (EqA) protects employees and applicants for employment from discrimination based on or related to a number of 'protected characteristics' (section 4). These include race (section 9) and sex (section 11).

Direct discrimination

136. Section 39(2) of the Equality Act 2010 prohibits an employer discriminating against one of its employees by dismissing him or by subjecting the employee to a detriment. This includes direct discrimination because of a protected characteristic as defined in section 13.
137. Section 13 of the Equality Act 2010 provides that 'A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others'.
138. Under section 23(1), where a comparison is made, there must be no material difference between the circumstances relating to each case. It is possible to compare with an actual or hypothetical comparator.
139. In order to find discrimination has occurred, there must be some evidential basis on which we can infer that the Claimant's protected characteristic is the cause of the less favourable treatment. We can take into account a number of factors including an examination of circumstantial evidence.
140. We must consider whether the fact that the Claimant had the relevant protected characteristic had a significant (or more than trivial) influence on the mind of the decision maker. The influence can be conscious or unconscious. It need not be the main or sole reason, but must have a significant (i.e. not trivial) influence and so amount to an effective reason for the cause of the treatment.

141. In many direct discrimination cases, it is appropriate for a tribunal to consider, first, whether the Claimant received less favourable treatment than the appropriate comparator and then, secondly, whether the less favourable treatment was because of the protected characteristic. However, in some cases, for example where there is only a hypothetical comparator, these questions cannot be answered without first considering the 'reason why' the Claimant was treated as she was.
142. Section 136 of the Equality Act sets out the relevant burden of proof that must be applied. A two-stage process is followed. Initially it is for the Claimant to prove, on the balance of probabilities, primary facts from which we could conclude, in the absence of an adequate explanation from the Respondent, that the Respondent committed an act of unlawful discrimination.
143. At the second stage, discrimination is presumed to have occurred, unless the Respondent can show otherwise. The standard of proof is again on the balance of probabilities. In order to discharge that burden of proof, the Respondent must adduce cogent evidence that the treatment was in no sense whatsoever because of the Claimant's disability. The Respondent does not have to show that its conduct was reasonable or sensible for this purpose, merely that its explanation for acting the way that it did was non-discriminatory.
144. Guidelines on the burden of proof were set out by the Court of Appeal in **Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258** and we have followed those as well as the direction of the court of appeal in **Madarassy v Nomura International plc [2007] IRLR 246, CA**. The decision of the Court of Appeal in **Efobi v Royal Mail Group Ltd [2019] ICR 750** confirms the guidance in these cases applies under the Equality Act 2010.
145. The Court of Appeal in Madarassy, states:
- 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.' (56)
146. It may be appropriate on occasion, for the tribunal to take into account the Respondent's explanation for the alleged discrimination in determining whether the Claimant has established a prima facie case so as to shift the burden of proof. (**Laing v Manchester City Council and others [2006] IRLR 748; Madarassy**). It may also be appropriate for the tribunal to go straight to the second stage, where for example the Respondent asserts that it has a non-discriminatory explanation for the alleged discrimination. A Claimant is not prejudiced by such an approach since it effectively assumes in his/her favour that the burden at the first stage has been discharged (**Efobi v Royal Mail Group Ltd [2019] ICR 750, para 13**).
147. In addition, there may be times, as noted in the cases of **Hewage v GHB [2012] ICR 1054** and **Martin v Devonshires Solicitors [2011] ICR 352**, where we are in a position to make positive findings on the evidence one way or the other and the

burden of proof provisions are not particularly helpful. When we adopt such an approach, it is important that we remind ourselves not to fall into the error of looking only for the principal reason for the treatment, but instead ensure we properly analyse whether discrimination was to any extent an effective cause of the reason for the treatment.

148. Allegations of discrimination should be looked at as a whole and not simply on the basis of a fragmented approach **Qureshi v London Borough of Newham [1991] IRLR 264, EAT**. We must “see both the wood and the trees”: **Fraser v University of Leicester UKEAT/0155/13** at paragraph 79. Our focus “must at all times be the question whether or not they can properly and fairly infer... discrimination.”: **Laing v Manchester City Council, EAT at paragraph 75.**

Victimisation

149. Section 27 EqA provides: “(1) A person (A) victimises another person (B) if A subjects B to a detriment because— (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act. (2) Each of the following is a protected act— (a) bringing proceedings under this Act; (b) giving evidence or information in connection with proceedings under this Act; (c) doing any other thing for the purposes of or in connection with this Act; (d) making an allegation (whether or not express) that A or another person has contravened this Act. (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith. (4) This section applies only where the person subjected to a detriment is an individual. (5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.”
150. The starting point is that there must be a clear allegation amounting to a protected act. Therefore an allegation that something might be discriminatory rather than is actually discriminatory, will not be sufficient **Chalmers v Airpoint Limited and Others UKEAT/0031/19.**
151. In addition, if what the issue alleged by Claimant as amounting to a breach of the EqA would not be unlawful under the EqA, then it cannot be a protected act for example see **Waters v Metropolitan Police Comr [1997] IRLR 589.**
152. We note Langstaff P in **Durrani v London Borough of Ealing UKEAT/0454/2012**: “*there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.* In that case the complaint being made was not of discrimination, but of unfair treatment generally and the ET had not erred in finding that was not a protected act.
153. In **Chalmers v Airpoint Ltd UKEAT 0031/19** the EAT upheld the ET’s decision that an employee’s comment in her grievance that the employer’s actions “may amount to discrimination”, and she had also not mentioned ‘sex’ was insufficient to be a protected act.
154. The employee must be subjected to a detriment, which has been decided to mean placed at a disadvantage **Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230.** Unfavourable or less

favourable treatment arguments are not in accordance with the correct statutory wording of section 27. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL***. Therefore, for detriment to be proven, it is for the Claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.

155. Detrimental treatment of a Claimant will not be because of a protected act if the detrimental treatment is caused by the way in which the protected act is done or the behaviour of the Claimant whilst communicating the protected act or gathering information for it. For example see ***Woods v Pasab Limited [2012] EWCA Civ 1578*** and ***Martin v Devonshire Solicitors [2011] ICR 352***.
156. The detriment relied upon by the Claimant, must be linked to the protected act. The same test for causation in direct discrimination, is therefore relevant to victimisation because the statutory wording is the same.
157. A detriment cannot be found to have been because of a protected act if there is no evidence that the person who allegedly inflicted the detriment knew about the protected act. The Court of Appeal decision in ***Scott v London Borough of Hillingdon [2001] EWCA Civ 2005*** was that knowledge of a protected act is a precondition of a finding of victimisation. In that case there was no positive evidence that the decision maker knew of a previous complaint of discrimination, and therefore no basis for a finding of victimisation. The knowledge of one person in an organisation of a protected act cannot be attributed to another; the protected act must operate on the mind of the decision maker: ***Peninsula Business Services Ltd v Baker [2017] ICR 714, EAT***.

Harassment (sex and race)

158. Section 40 of the EqA renders harassment of an employee unlawful.
159. Section 26 EqA 2010 provides: (1) A person (A) harasses another (B) if- A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of - violating B's dignity, or 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— the perception of B; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.
160. ***Richmond Pharmacology Ltd v. Dhaliwal [2009] IRLR 336*** makes clear that 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 related to other protected characteristics), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

Unlawful deduction from wages

161. The Employment Rights Act 1996 (“**ERA**”) provides:

13 Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

[...]

23 Complaints to employment tribunals

(1) A worker may present a complaint to an employment tribunal—

(a) that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

[...]

(2) Subject to subsection (4), an employment tribunal shall not consider a complaint under this section unless it is presented before the end of the period of three months beginning with—

(a) *in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or*

(b) *in the case of a complaint relating to a payment received by the employer, the date when the payment was received.*

(3) *Where a complaint is brought under this section in respect of—*

(a) *a series of deductions or payments, or*

(b) *a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.*

(3A) *Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).*

[...]

24 Determination of complaints

(1) *Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—*

(a) *in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,*

[...]

(2) *Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate the worker for any financial loss sustained by him which is attributable to the matter complained of.*

[...]

26 Complaints and other remedies

Section 23 does not affect the jurisdiction of an [employment tribunal] to consider a reference under section 11 in relation to any deduction from the wages of a worker; but the aggregate of any amounts ordered by an [employment tribunal] to be paid under section 12(4) and under section 24 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

[...]

27 Meaning of “wages” etc

(1) *In this Part “wages”, in relation to a worker, means any sums payable to the worker in connection with his employment, including—*

(a) *any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise,*

[...]

but excluding any payments within subsection (2).

[...]

(4) *In this Part “gross amount”, in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.*

Breach of contract

162. For any contract to have been formed, there are a number of essential components:

162.1 an intention to create legal relations;

162.2 offer;

162.3 acceptance;

162.4 consideration; and

162.5 sufficient certainty as to the terms.

163. Contracts of employment can be formed, varied and terminated through express agreement, whether in writing or orally. They can also be formed and varied through conduct. Acceptance of a new or varied contract can be implied where an employee has been issued with a contract and works under it, even though they do not sign and return it.

164. The test as to whether a contract has been formed, varied or terminated is objective. The tribunal must have regard to what a reasonable observer would think. That is not to say that the subjective states of the minds of the parties involved are entirely irrelevant. They are part of the overall factual matrix that needs to be considered.

Breach of Contract - Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (“the Order”)

165. Article 2 of the Order provides: “*This Order does not enable proceedings in respect of a contract claim to be brought before an employment tribunal unless—(a) the effective date of termination (as defined in section 55(4) of the 1978 Act) in respect of the contract giving rise to the claim, or (b) where there is no effective date of termination, the last day upon which the employee works in the employment which has terminated, occurs on or after the day on which the Order comes into force.*”
166. Article 3: “*Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if—(a) the claim is one to which section 131(2) of the 1978 Act applies and which a court in England and Wales would under the law for the time being in force have jurisdiction to hear and determine; (b) the claim is not one to which article 5 applies; and (c) the claim arises or is outstanding on the termination of the employee’s employment.*”
167. Article 5 provides: “*This article applies to a claim for breach of a contractual term of any of the following descriptions—(a) a term requiring the employer to provide living accommodation for the employee; (b) a term imposing an obligation on the employer or the employee in connection with the provision of living accommodation; (c) a term relating to intellectual property; (d) a term imposing an obligation of confidence; (e) a term which is a covenant in restraint of trade. In this article, “intellectual property” includes copyright, rights in performances, moral rights, design right, registered designs, patents and trade marks.*”

ANALYSIS AND CONCLUSIONS

168. We were careful to look at the evidence ‘in the round’ to determine whether it suggested that the Claimant had been subjected to the unlawful treatment of which she complains (this is particularly important when it comes to allegations of direct discrimination, victimisation and harassment). Having done so we did not find cause to change our decisions on any issue or issues.
169. The headings used below are not intended to summarise our findings, they are used to signal a new topic or point in list of issues.

Comparator and the burden of proof

170. Comparator: We find that EK is not a valid comparator. We explain this in more detail when we turn to our findings on the individual complaints of less favourable treatment. However, the central reasons why EK is not a valid comparator are that:

170.1 He was performing well in his role and consequently passed his probation (whereas the Claimant was not performing well);

170.2 He followed the Respondent’s protocols and focused on the work that had been approved for progression in the D&I team and was proactive in taking work from the workstack;

170.3 He told the Respondent that he had been offered a better paid role by another employer. The Respondent increased his banding and salary in order to retain him because he was a highly rated performer.

170.4 The Claimant had a social science background and had experience managing people, so she was appointed to a role which had line management responsibility, whereas EK had lots of technical experience, but no management experience, so he had a slightly different role with no management responsibility [GMWS6].

171. Burden of proof – race: As regards her complaints of direct race discrimination, the Claimant has advanced no evidence, other than her bare assertions of less favourable treatment, that might suggest that the reason for any less favourable treatment was her race. She has not advanced material from which we ‘could conclude’ that on the balance of probabilities, the Respondent has committed an unlawful act of race discrimination (Madarassy). We have not placed much weight on these factors but note also that it was Mr Muctor who was involved in the decision to recruit the Claimant and there was no suggestion that IC (who is also Chinese and a woman) suffered any form of discrimination because of her race.

172. Burden of proof – sex: The Claimant has similarly failed to shift the burden of proof in respect of her sex discrimination complaints. Other than her bare assertions of less favourable treatment, the only other thing that the Claimant advances in support of her claim that she has been subjected to sex discrimination is the comment that she alleges that Mr MJ said at the 2022 Christmas party. In that regard we refer to our findings on the alleged protected acts insofar as they are relevant and find as follows as regards Mr MJ’s Christmas party comment:

172.1 Handwritten notes which the Claimant prepared in February 2023 at [479] refer to this but do not add any detail to the allegation although in her witness statement [CWS14] the Claimant clarified that the notes record: *“Among a group of ladies, my line manager told women gave him troubles. Afterwards, a female new recruit left the organisation. I don’t know whether these two events connect, but when I heard the comment I feel shocked.”*

172.2 The Claimant in her witness statement [CWS15] makes reference to then having had a meeting with YD (Culture, Engagement and Communications Lead) about concerns she had about a differential between the management responsibilities she had anticipated having and the reality she was experiencing and then had a meeting with Mr Muctor. However, she makes no suggestion that she raised with Mr Muctor her allegation about Mr MJ’s comment.

172.3 The first time she made this allegation was in her appeal against Mr MJ’s decision to fail her probation period in May 2023 when, in the documents accompanying her appeal against dismissal, she said [226]: *“[Mr MJ] shows little respect to women’s work. At last Christmas’ party in the town hall, he made a comment in a large group of women that women gave him troubles when I stood next to him.”*

172.4 The notes of the 26 September 2023 grievance investigation meeting record in the timeline of events [608]: *“25/05/2023 Appeal meeting with Gurpreet, Aruj and Yvette. Yan believes that [Mr MJ] copies phrases from Gurpreet (suspicion) Phrase of concern – “All women are trouble” used by [Mr MJ]. No named witnesses can be recalled. Confirmed that the phrase was made by [Mr MJ] not Gurpreet.”*

172.5 The grievance outcome records [586]: *“Areas I have not been able to investigate During my interview with Weigang Yan I had expressed an interest in interviewing a witness to an incident involving inappropriate comments but Weigang Yan was uncomfortable sharing the name without permission. Following the meeting Weigang Yan said the person was not comfortable to come forward as a witness”.*

172.6 At CWS12 the Claimant said: *“In the party, the new data analyst [NAME A] was invited. She was supposed to start her job in January 2023 as a data analyst. In the lounge we had chats and giggles. [Mr MJ] was standing beside me and [NAME A]. There were a few other girls next to us. Without any warning, he started saying “Women, women, women give me troubles.” I was slightly shocked and asked him why he made such comment. He felt his voice not high enough. He raised his voice, saying to me ‘All women are troubles’. As a female I felt really hurt and found this comment highly offensive. I could not speak for half an hour. [NAME A], who was new standing next to me, also heard this. She probably observed my expression of stress and sadness. In January 2023 she did not join the organisation saying that she had family matters in India. The comment made by [Mr MJ] was unwanted, unwelcome and uninvited to me. Being harassed because of sex is a contravention of The Equality Act 2010. The fact that [Mr MJ] believed it was reasonable to make such an offensive remark related to sex, evidences the fact that WCC has not done nearly enough to eradicate and eliminate harassment and discrimination within the work place.”*

172.7 On the balance of probabilities Mr MJ did make the statement as it is recorded in the Claimant’s notes of February 2023 (as being the closest documented record of the allegation).

172.8 As the Claimant has consistently said, the comment was made in a group of women at the Christmas party.

172.9 It was said in the context of a light-hearted conversation (the Claimant refers to *“chats and giggles”* as part of the context for the comment).

172.10 The Claimant did not complain or even raise it informally (whether with Mr Muctor or HR) until May 2023 and gave no explanation for not doing so;

172.11 She gave no wider context to how the comment was made or how the other women there reacted to it;

172.12 Nobody else made a complaint about the comment (and we consider it would have generated other formal or informal reaction had it been the overtly misogynistic comment that the Claimant says she took it to be);

172.13 We acknowledge that this was relatively early in her employment and Mr MJ, as her direct line manager, had started even more recently and that it can be difficult to raise such concerns, particularly in those circumstances. Had this comment had the impact she said it had, we think she would have raised it at the time.

172.14 The Claimant's assertion was unfounded that the new recruit (referred to as "NAME A" above) did not go on to take up employment with the Respondent because of the comment. The Claimant accepted that she came to know that NAME A had had to go to India for family reasons. The Claimant's assertion that NAME A just gave her need to go to India as an 'excuse' for not taking up her employment was not substantiated. The Claimant gave no evidence that NAME A had told her that this was an excuse.

172.15 The comment was not meant as an insult and did not amount to unlawful sex harassment and it is noteworthy that the Claimant has not included it as an individual act of harassment for us to determine in the LOI.

172.16 The comment does not suggest that Mr MJ did not respect or want to work with women – it was made as part of the light hearted conversations the Claimant described.

173. The Claimant made other assertions, such as a comment that Mr MJ had told her not to use her "executive tone". However, they were not related to sex or race.

The alleged protected acts – victimisation complaints

174. We now address the alleged protected acts from which the Claimant's complaints of victimisation derive.

LOI 4.1.1 The Claimant alleged that she had been subjected to sex discrimination during the probation appeal meeting on 25 May 2023;

175. We accept Mr Muctor's evidence [GMWS24] that at this meeting the Claimant spoke freely about her concerns over Mr MJ's poor management and lack of understanding but that at no stage during this meeting did the Claimant make any allegation that she had been subjected to sex discrimination. We note that the Claimant in her witness statement [CWS34] said "*On 25 May 2023, an appeal meeting was held by Gurpreet Muctor. [AH] and [YD] were invited to the meeting (Bundle page 238). [...] In the support evidence I also mentioned the incident of [Mr MJ]'s comments on women in Christmas celebration in December 2022 (Bundle page 226).*" The Claimant in her witness statement did not say that she raised the incident at the meeting.

176. We find that the Claimant did not alleged discrimination at the meeting, she only did so before the meeting by including the following (at circa page 5 of a document about 13 pages long) and without any prominence being drawn to it (e.g. by way of a heading) [226]:

"[Mr MJ] shows little respect to women's work. At last Christmas' party in the town hall, he made a comment in a large group of women that women gave him troubles when I stood next to him."

177. This document was sent to Mr Muctor as it was attached to the Claimant's email of 10 May 2023 [220] and the comment was a protected act (albeit not the one relied upon by the Claimant). Mr Muctor did not tell us whether or not he spotted the comment in the attachment but, on the balance of probabilities, we consider that Mr Muctor did not notice it. Had he noticed it we consider it probable that he would have raised it for comment with Mr MJ and sought advice from HR. The complaint in the document did not draw any attention from anyone.
178. Importantly, the Claimant did not in any way link the comment with any of her other complaints as set out in her appeal documents. She did not suggest that the comment was evidence that the broader matters about which she complained were caused by sex discrimination. It was a solitary allegation about something said at a Christmas party with no links drawn to any other matters and the cover email to which the document was attached raised no question of discrimination of any type [223].

4.1.2 The Claimant alleged that she had been subjected to race discrimination, sex discrimination and harassment during the probation review meeting on 4 September 2023

179. We accept the evidence of Mr Muctor [GMWS27] and Mrs Clarke [DCWS6-7] that the Claimant did not allege race or sex discrimination or harassment at the probation review meeting on 4 September 2024.
180. Mr Muctor was not a recipient of the email that the Claimant sent on 4 September 2023 [456] to which she attached a set of slides [510-521] titled "*Achievements and work in probationary period*". The slides at 521 and 519 clearly do include allegations of discrimination and thereby 'protected acts' but it is not those slides which the Claimant relies upon. We find, based on the evidence we heard, that the Claimant only presented the slide at [518] during the Teams meeting.
181. The cover email of 4 September 2023 included the comment [456] (emphasis added) "*I would like to raise a concern I have during my employment in WCC. Attached is the work I have done during my probation. In the end of the slides, I have added my concerns. Some of them have been mentioned in my previous probation review and some of them have been discussed in my seasonal catch-up. Daphne has indicated she will be in my probation review. The slides will cover what I will report during my review. I wish to take this opportunity to discuss the concerns I have if that is OK.*". This did not clearly draw attention to the fact that the slides included serious (even if not well explained) allegations of unlawful discrimination. However, it is concerning that NM, DS and Ms Clarke did not look at the slides and notice those serious complaints. Given that Ms Clarke was there to support Mr Muctor as HR representative at the probation review meeting and the subject of the Claimant's email was "*RE: HR representative for probation review*" it was concerning that Ms Clarke's evidence in response to Tribunal questions was that she did not look at the slides because NM had been supporting with respect to concerns during the Claimant's employment and:

181.1 She (Mrs Clarke) was just supporting Mr Muctor and she thought it was therefore important not to get involved prior to the Claimant presenting the slides (we do not understand the logic to this);

181.2 NM, to who the email was addressed, did not raise with Mrs Clarke the content of the slides.

182. We can understand that Ms Clarke, as the HR person supporting Mr Muctor at the probation review meeting, might not have been the HR representative to then help with the process of investigating allegations of discrimination against Mr Muctor and that person might properly have been NM. We also accept Ms Clarke's evidence that, had the Claimant raised the concerns in the meeting itself (e.g. by presenting the slides at [519] and [521]), Ms Clarke would have brought the concerns to the attention of NM, and NM and SD would then have dealt with those concerns. Presumably then she might have needed to advise Mr Muctor to pause his decision making pending any necessary investigation of discrimination allegations against him. It does not reflect well on the Respondent that neither NM, Mrs Clarke or SD looked at the slides and picked up on the discrimination allegations contained in them (however bare those allegations appeared to be). We do not consider that anything ultimately turns on this failure or that anyone deliberately ignored the concerns being raised.

183. The Claimant alleges that when she sought to raise her discrimination allegations the meeting was drawn to an abrupt end. We do not consider it probable that that was the case. We find it probable that the meeting was time pressured and that it had to be brought to an end and that it was closed before the Claimant had raised her discrimination allegations. We also think it probable that, what she did say, did not appear to Mr Muctor to represent a cogent response to his concerns about her performance in her extended probation period. However, there is no suggestion in the email that the Claimant sent the following day, 5 September 2023 [456], that she felt that her attempts to explain allegations of discrimination had been squashed. We accept as probable Mrs Clarke's evidence [DCWS6] that the Claimant was confident, robust and quite forthright at the meeting and that there was nothing during the meeting to suggest a history of animosity between the Claimant and Mr Muctor.

184. To this date the Claimant had therefore done two protected acts but they are not the ones she relies upon. The protected acts that the Claimant did do had so little prominence that they were overlooked and did not draw any attention. Whilst serious allegations, they were not made in a compelling way.

4.1.3 The Claimant's written grievance dated 6 September 2023 contained allegations of race discrimination, sex discrimination and harassment.

185. The Claimant's grievance of 6 September 2023 was clearly a protected act [461 – 463] for reasons which are plain in the text we have set out in our findings of fact. However, we accept Mr Muctor's evidence that it was not shared with him on 6 September 2023 [GMWS22] and that he was only informed of the broad nature of the grievance on 27 September 2023, shortly before he met with Mr Wilkins who was conducting the grievance investigation. We accept that Mr Muctor had no other involvement with the grievance process. Mr Muctor did not therefore know of this protected act before he took the decision to dismiss the

Claimant (which, whilst decided on 6 September 2023 [GMWS20], was communicated to the Claimant on 15 September 2023). As we have said, Mr Muctor did not see the applicable dismissal appeal slides prepared by the Claimant and the allegation in the document sent by the Claimant on 10 May 2023 [226] understandably slipped Mr Muctor's attention.

4.1.4 The Claimant alleged that she had been subjected to race discrimination and sex discrimination during the appeal meeting on 21 September 2023

186. This is clearly an error in the list of issues because the appeal meeting was not until 17 October 2023. The Claimant raised her appeal in writing on 21 September 2023 [542-543] and that letter was a protected act as, for example, it included the allegation: "*He discriminated against me and gave more opportunities to a worker who is a different race and gender. He treated me in a less favourable way.*". We accept Mr Muctor's evidence [GMWS21] that the appeal was sent to his manager, AH (Chief Digital and Innovation Officer) and that Mr Muctor was not involved in the process, but was made aware that the appeal was not upheld [581 – 582].

4.1.5 The Claimant alleged that she had been subjected to race discrimination and sex discrimination during the grievance investigation meeting on 26 September 2023

187. Again it is clear that the Claimant did do a protected act at this meeting on 26 September 2026. For example the notes of the meeting [607 – 611] record [at 610] "*Yan shared that she felt she was victim of racial discrimination and gender discrimination by [Mr MJ] and Gurpreet. However as Gurpreet is responsible for [Mr MJ] he is also responsible for the racial and gender discrimination.*"

Protected acts and causation

188. We have stepped back from our findings on the protected acts done by the Claimant (including those on which she does not rely) and the events that followed them. We conclude that her protected acts were not taken by any of the decision makers as being well founded. There is no evidence of Mr Muctor, to the extent that he knew the detail of any protected act, taking any offence to the allegations made. At the hearing he appeared perplexed as to why the allegations were being made against him. Having considered the case we understand why Mr Muctor appeared perplexed. He had extended the Claimant's probation (given her another chance to prove herself) and there was clear contemporaneous evidence of the Claimant not having performed satisfactorily during her extended probation period and not having followed the guidance of Mr Muctor in respect of how she focused her energy. Mr Muctor's experiences of the Claimant's underperformance in the extended probation period bore a close resemblance to the concerns that Mr MJ has raised in respect of the first part of the Claimant's employment.

189. Having taken this step back we find no basis to conclude that the protected acts were in any sense causative of any detrimental treatment of the Claimant. We ask the parties to note our further findings in respect of the acts complained of below because they are of course relevant to our conclusion that the Claimant's protected acts did not lead to her suffering the detriments alleged.

190. We add that the Claimant's grievance was considered properly, dealt with promptly and answered in a way that we consider to have been appropriate.

The acts complained of – direct discrimination and victimisation

2.2.1 During the Claimant's extended probation period, Gurpreet Muctor blocked the Claimant's access to resources required to perform her job duties by:

2.2.1.1. Despite managing four staff members, the Claimant did not receive management training. The training courses for manager reporting and manager Personal Development Framework (PDF) were never approved.

191. For the reasons we have explained in our findings of fact, there is no basis to this claim. The Claimant had access to the Respondent's training courses and Mr Muctor did not block (either actively or by failing to approve it) any training for the Claimant.

192. As well as there being no factual basis for the claim, there is no evidence that the Claimant was treated less favourably, as alleged, because of her race, sex or subjected to a detriment because of any of the Claimant's protected acts.

2.2.1.2 As a data scientist, the Claimant did not receive the adequate computing resource namely high spec PC to perform her job role however other team members (including other data scientists) were provided with high spec PCs including EK who received an Apple Mac.

193. There was a delay in issuing PC's to staff that were of a high enough specification for all of the tasks that the D&I team undertook. New PC's were not allocated to staff until some time after the Claimant's employment ended. As we explain in our findings of fact there is no evidence that the Claimant was not provided with adequate computing resource because of her race or sex or because she had made a protected disclosure. EK was given a Mac because he put himself forward to test it but Macs were then shown not to be suitable because they could not run all of the necessary applications.

194. We find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.2 Gurpreet Muctor decided to promote male workers (EK) as opposed to promoting the Claimant;

195. There is no evidence that any male workers were promoted by Mr Muctor. We have explained in our findings of fact why EK was given a pay increase and moved into a higher band but his job title and responsibilities remained the same. There is no evidence to suggest that the Claimant was treated less favourably than EK or anyone else as regards promotion because of her sex or race or subjected to a detriment because of any of the Claimant's protected acts.

196. The Claimant did not perform well during her employment and, even though she had management experience which EK did not have, given the Claimant's performance it was reasonable for Mr Muctor not to ask her to act up into Mr MJ's role when Mr MJ resigned. In any event neither EK nor anyone else was asked to act up, Mr Muctor reasonably decided that he wanted to get a handle on the

team and take on Mr MJ's responsibilities himself for a period of time before thinking about replacing Mr MJ. We accept his evidence that the timing of recruitment to replace Mr MJ had no connection at all with the timing of Claimant's dismissal.

197. We accept Mr Muctor's evidence [GMWS43] that vacancies in the Respondent are in any event advertised and filled following a competitive recruitment process and it was not within his power to 'promote' anyone to a new role. The Claimant did not, during her employment with the Respondent, apply for any other roles.
198. We find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.3 Gurpreet Muctor undermined the Claimant when it came to job opportunities, resources and stakeholder contacts which were related to the Claimant's area of business, by:

2.2.3.1 Before the team workshop organised by the Claimant on 7 July 2023, Mr Muctor added EK and new sessions into the workshop plan one day before the workshop without notifying the Claimant of the changes. During the workshop, Mr Muctor disrupted the organisation of the meeting without notifying the Claimant of the changes and then ignored the actions the Claimant and Mr Muctor had agreed for the whole team during the meeting.

199. We accept the Respondent's submissions that Mr Muctor asked the Claimant to take the lead on organising the workshop and included the Claimant but not EK in the original agenda for the workshop. It was EK who volunteered to take items 7 and 8, not the Claimant and there were good practical reasons for asking EK to talk about how the team managed and recorded its work (EK had been working on a record of the team's projects at that time). This did not disrupt the organisation of the meeting or an agenda that was supposed to be flexible. The Claimant's email 10 days after the workshop indicates that she thought it had gone well and is further demonstration that Mr Muctor had asked the Claimant to lead in organising it. There is no evidence to suggest that the Claimant was treated less favourably as alleged because of her sex or race or subjected to a detriment because of any of the Claimant's protected acts.

2.2.3.2 On 18 July 2023, Gurpreet Muctor deliberately interrupted the Claimant's work during a discussion meeting and prevented the Claimant from developing 'BI governance work', which was the front-end of the data ecosystem. In comparison, Mr Muctor allowed EK (Data Scientist) to lead all projects and the team including the Smart City Operating system, which is a type of data ecosystem.

200. We accept the Respondent's submission that this allegation is difficult to understand and that it appears to rely on a difference in treatment between the Claimant and EK, in relation to two different matters (interruption of the Claimant at a meeting and prevention of work, as compared to EK being allowed to 'lead all projects and the team'). We accept the Respondent's broader submissions in respect of this complaint and find that there is no evidence that the Claimant was treated less favourably because of her sex or race or subjected to a detriment because of any of the Claimant's protected acts.

2.2.3.3 Around 24 July 2023, Gurpreet Muctor instructed Martyn Driscoll (Senior Solution Architect) to send the Claimant an appointment of recruitment and then removed the Claimant and replaced her with Aline Angst (Enterprise Architect/Business Analyst).

201. This complaint fails for the reasons we have explained in our findings of fact. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.3.4 On or around 28 July 2023, Mr Muctor took a proposal prepared by the Claimant to negotiate with stakeholders without the Claimant and then criticised the Claimant's proposal.

202. As we have explained, the Claimant's proposal was flawed and Mr Muctor did not take it to negotiate with stakeholders. He made clear to the Claimant that it was a flawed proposal and the reasons why (it was too complex and overreached).

203. The Claimant did not make clear what negotiations she alleged Mr Muctor had engaged in.

204. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.3.5 On or around late July / early August 2023, Gurpreet Muctor introduced the Claimant to the delivery manager (Lyn Newton) without giving the Claimant any clear instructions, however, Mr Muctor provided clear instructions to EK and to [RD].

205. There is no evidence, as explained in our findings of fact, that the Claimant was treated less favourably as alleged or at all. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.3.6 During the Claimant's extended probation period, Mr Muctor gave more project opportunities to EK (Noise complaints prediction and sensor, Footfall and expenditure, Clean air route, Green Energy Transition project, Social listening, REPORT IT data OS). EK was also asked to coordinate the JIRA dashboard development with senior delivery manager (Amber). In comparison, the Claimant was asked to develop small cell deployment.

206. Mr Muctor accepted that he asked the Claimant to work on a proposal for Small Cell deployment. This was because the Geospatial Information System (GIS) was a function of her team.

207. We accept the Respondent's submission that the Claimant has not offered any clear explanation for her lack of engagement with the Workstack and a repeating theme was that the Claimant's work was misaligned with the D&I team's core work. We accept that there are numerous examples in the bundle of Mr Muctor identifying the same [277, 280, 430, 435].

208. Mr Muctor's unchallenged evidence was that the Claimant's colleagues, including EK would, when they had capacity, pick up priority tasks from the Workstack. The Claimant has not explained why she did not or could not do the same. We accept the findings of DW as investigator of the Claimant's grievance that, as regards projects which arose as a result of external requests or discussions, Mr Muctor considered that the Claimant did not follow the governance process whereas EK did [588]. As was submitted by the Respondent, that is consistent with the fact that LN (as delivery manager), had to add the Claimant's projects to the Workstack in a separate column. As such the Claimant's projects were treated differently because:

208.1 they were not on the Workstack; and

208.2 they had not been through the governance process.

209. We have explained above why EK was not an appropriate comparator in this regard (he took work from the Workstack and used the governance process).

210. The Claimant was not treated less favourably than EK or anyone else in respect of the allocation of opportunities and work.

211. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.3.7 On or around 25 August 2023, Mr Muctor asked the Claimant to cancel an important meeting for MDM development. The Claimant was part of the Footfall and expenditure project. The project included Jon Beeby (Data Engineer), Ivy Chua (Data Curator) and the Claimant (Data Scientist). Mr Muctor instructed EK to lead this project which confused Jon Beeby who did not know who he should work with.

212. As we have explained in our findings of fact, Mr Muctor had legitimate concerns for asking the Claimant to cancel the MDM meeting and for suggesting that she refocus. He suggested a 'reboot' of the project, this time with LN as delivery manager being involved. Mr Muctor did not take the Claimant off the project or try to limit her involvement. There is no evidence that he sought to involve EK and, again, there is no evidence that the Claimant was treated less favourably because of her sex or race as alleged or that she was subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.3.8 Mr Muctor excluded the Claimant from several key meetings.

213. We accept Mr Muctor's evidence [GMWS71] that the Claimant was not excluded from "*several key meetings*". The Claimant was not invited to project team meetings where she was not on the project team because she would have had no role in such meetings. Equally Mr Muctor did not involve others in meetings on projects where they would have no role to play. We accept that the Claimant was a regular participant of the Data Workstack call that was initiated from the 25 July 2023, in response to the actions from the retrospective workshop. The Claimant pointed in evidence to a meeting on 18 July 2023 and suggested that she had been excluded from it [818]. As the Respondent submitted, the relevant email is redacted and so it is not clear that the Claimant was in fact 'excluded'. In any event

we accept Mr Muctor's evidence (which the Claimant did not challenge) that IC was at that meeting. As we have said, IC shares both of the Claimant's protected characteristics.

214. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.4 Gurpreet Muctor agreed the tasks / targets contained in the Claimant's personal development plan however after nine months of undertaking the work described in the personal development plan, Mr Muctor alleged that the work did not fit into 'D&I core work' and there was no resource for it.

215. Mr Muctor was not able to comment on any PDP predating June 2023 because he was not the Claimant's manager until then. We have set out in our finding above with respect to the Claimant's PDP's after he became the Claimant's direct manager and with respect to the fact that the Claimant did not then follow Mr Muctor's instructions or guidance on what she needed to focus on and, indeed how she needed to be more focused on the D&I teams' core work.

216. We accept the Respondent's submission, on the balance of probabilities, that the work set out in the Claimant's PDP was what she wanted to do rather than what was required of her. Mr Muctor accepted that some projects on the PDP were in the Workstack (e.g. mobile data capacity and the apprentice's work). However, the remainder were the Claimant's personal projects which Mr Muctor did not approve. Mr Muctor made clear to the Claimant that she needed to break down multi-year projects into smaller pieces of work that could be delivered in a shorter and demonstrable timescale so that the team could show progress and for the projects to have a prospect of getting through governance. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.5 Gurpreet Muctor was biased towards the Claimant's male colleagues, who did not share the Claimant's race.

217. We accept Mr Muctor's evidence [GMWS79] that he was not biased towards non-Chinese male colleagues of the Claimant. We accept his evidence that the Respondent, and the Data Team specifically, have a diverse workforce and that Mr Muctor would not treat anyone differently due to their race and/or sex or because of a protected act. In any event, as submitted by the Respondent, this was a bare allegation without any detail or evidence to support it. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.6 Mr Muctor was reluctant to collaborate and share stakeholder resources with the Claimant, however, he created opportunities for EK (Data Scientist) by providing access to resources and stakeholder contacts. This meant that the

Claimant was not able to develop work with wider stakeholders which in turn resulted in the Claimant being rejected for a promotion.

218. We accept the Respondent's submission that this is essentially a repetition of LOI 2.2.3.6. We do not repeat the reasons we have explained for EK getting the work and the resources available to him save to say that he took work from the Workstack which had been through the governance and resource management process. The Claimant predominantly did not do so. In any event Mr Muctor did allocate business analyst support to the Claimant which he did not allocate to EK [499]. We accept Mr Muctor's evidence at [GMWS80-81]. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.7 Gurpreet Muctor provided EK (Data Scientist) with more opportunities than the Claimant and provided EK with higher profile work. This was evidenced through a long project list for EK and a shorter project list for the Claimant. EK was also provided with more resources including devices, people and data.

219. Again, we accept the Respondent's submission that this is essentially a repetition of LOI 2.2.3.6. We accept Mr Muctor's evidence [GMWS83-84] that EK proactively sought work from the workstack, so he had more projects and potentially greater access to resources, although the Claimant had the same opportunity to source work from the workstack and she chose not to do so.

220. We accept his evidence that the Claimant had additional resources within the team such as a delivery manager and she managed a number of staff and would often allocate them work from her projects.

221. We accept that Mr Muctor had no direct involvement with allocating work from the Workstack but allocation was based on capacity and expertise.

222. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.8[Mr MJ] set the Claimant up to fail her probation period.

223. We accept the Respondent's submission that there is no evidence that Mr MJ set the Claimant up to fail her probation. We accept that the Mr MJ's timeline at [236] evidences a difficult working relationship with the Claimant that was troubled by communication problems, a lack of visibility and a failure by the Claimant to take responsibility for her lack of progress. We accept the Respondent's submission that Mr MJ noted that the Claimant did not '*like to be challenged or questioned on progress*' [245]. We find it probable that this is the case because of what transpired when the Claimant came under Mr Muctor's management and we agree that it is not surprising that the Claimant did not pass her probation under Mr MJ's management. We accept the Respondent's submission that the reason why Mr Muctor overturned Mr MJ's decision on the Claimant's original period of probation was that he was not satisfied with the evidence that Mr MJ provided and the procedure that he had followed. We accept Mr Muctor's evidence at GMWS85 and 86.

224. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.9 Mr Muctor set the Claimant up to fail her extended probation period.

225. As submitted by the Respondent we do not think it is probable that Mr Muctor, if he had wanted to discriminate against the Claimant by setting her up to fail her extended probation period, would have himself given the Claimant the opportunity to have that extension in the first place when Mr MJ had already concluded that the Claimant's performance had not been satisfactory. The Claimant was not able to advance an explanation for this. For the reasons we have explained, it was in the Claimant's power to focus her efforts in the ways she was being guided by Mr Muctor and she chose not to do so. It was the Claimant who was responsible for her own failure during her extended probation. We accept the Respondent submissions and Mr Muctor's evidence in this regard GMWS87-88.

226. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.10 The Claimant was bullied by [Mr MJ] when he was her line manager and subsequently bullied by Gurpreet Muctor after he became the Claimant's line manager.

227. We accept the Respondent's submission that there is no evidence of bullying behaviour by either Mr MJ or Ms Muctor. The use of the term bully or bullying in the Claimant's witness evidence did little more than add a different descriptor to the complaints on which we have made findings in this judgment.

228. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.11 The Claimant failed her six month probation period on 5 May 2023;

229. Whilst Mr MJ did not follow an adequate process with the Claimant during the first part of her employment, the reasons he cited at the time for deciding to fail the Claimant in her probation period were consistent with Mr Muctor's findings on the Claimant's performance after he overturned Mr MJ's decision and extended the Claimant's probation period. We accept Mr Muctor's evidence [GMWS93] that he saw nothing to suggest that Mr MJ's decision-making or handling of the Claimant's performance was in any way connected to the Claimant's race and/or sex, and that any oversights on the part of Mr MJ in following process were a result of Mr MJ's lack of management and potentially Local Government experience.

230. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.12 The Claimant's probation period was extended by three months on 25 May 2023

231. We find that the reasons that Mr MJ failed the Claimant on her probation were well grounded in so far as they were consistent with what Mr Muctor then experienced of the Claimant's performance after he overturned Mr MJ's decision. As such the extension of the Claimant's probation period was to the Claimant's benefit rather than it being unfavourable/less favourable/detrimental treatment or otherwise disadvantageous treatment. The Claimant takes the position that she should have been confirmed in role and that she was therefore disadvantaged by the extension of her probation period. However, it was nonetheless another opportunity for her to prove herself and we find that her unsatisfactory performance in the extended period evidences that the extension of her probation was warranted.
232. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.13 The Claimant failed her extended probation period on 4 September 2023;

233. We accept the Respondent's submissions that there were good reasons for Mr Muctor's decision to fail the Claimant in her probation and to terminate her employment. We accept that any employee in the Claimant's role, performing as she did, regardless of race or sex, would have faced the same outcome. We accept Mr Muctor's evidence [MGWS103] that he reasonably concluded that despite clear objectives and regular feedback and instructions the Claimant:
- 233.1 Showed resistance to change and an inability to grasp the established governance and management process which resulted in a lack of output and project delivery.
- 233.2 Routinely redirected the team to undertake work outside the scope of the team's role/departmental priorities.
- 233.3 Had poor communication skills, leading to misunderstandings or disruptions both within her team and peers.
- 233.4 Prioritised personal career goals by working on initiatives that are outside the department's governance process and approved list of projects.
- 233.5 Displayed a failure to acknowledge or to account for the failure to sufficiently progress her area of work.
234. Again, we find that the Claimant was not treated less favourably because of her sex or race as alleged nor was she subjected to a detriment because of any of the Claimant's protected acts as she alleged.

2.2.14 The Claimant's employment was terminated on 15 September 2023 (with effect from 6 October 2023);

235. We repeat our findings in respect of 2.2.13.

2.2.15 The Claimant has not been paid wages owed for October 2023;

236. For the reasons we have set out in our findings of fact, the failure to pay the Claimant for the period 1-6 October 2023 was due to an unintentional error on the part of Mr Muctor contributed to by an unfamiliarity with the Respondent's IBC system. It was not less favourable treatment because of her sex or race as alleged nor was it because of any of the Claimant's protected acts.

2.2.16 The Claimant has not been paid accrued but untaken annual leave owed until the termination date (06/10/23)

237. For the reasons we have set out in our findings of fact, the failure to pay the Claimant for her accrued but untaken annual leave was simply an error on the part of Mr Muctor which he corrected when he was made aware of it. It was not less favourable treatment because of her sex or race as alleged nor was it because of any of the Claimant's protected acts.

2.2.17 The Claimant received a letter dated 25 October 2023 from the Respondent alleging that the Claimant had received an overpayment of wages for the period 16 September – 30 September 2023 which demanded repayment of £1,156.55.

238. The letter that the Claimant received claiming that she had been overpaid, whilst of course alarming to the Claimant, arose out of Mr Muctor's unintentional error (as described in our findings of fact and in respect of other allegations) when completing the IBC system and inputting the Claimant's termination date. It was not less favourable treatment because of her sex or race as alleged nor was it because of any of the Claimant's protected acts.

The acts complained of - harassment

239. We turn now to the complaint that the matters addressed above also or in the alternative constituted unlawful harassment related to sex or race. We accept the Respondent's submission that it remained unclear after the evidence had been heard why the Claimant alleges that the conduct she complains of was related to her race or sex. We refer to our findings above and we accept the Respondent's submission that the acts complained of do not themselves suggest any such connection and they do not lend themselves to a race or sex harassment claim. In any event there is no reasonable basis for concluding that the acts complained of were done with the purpose of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. If they did have that effect on the Claimant then was not reasonable for them to have had done so.

5.2 & 6 The Claimant says she is owed salary for the period 1 – 6 October 2023 (the agreed termination date) inclusive

240. For the reasons we have explained in our findings of fact there has been no unlawful deduction or breach of contract in relation to the period 1 October to 6 October 2023. The payment to the Claimant for that period has been calculated in the correct way and in accordance with the Purple Book.

241. We agree with the Respondent's submission that the Claimant's challenge to that calculation was difficult to follow, was advanced on different bases and we do not

accept that she has in the circumstances presented a correct basis for calculating her salary for the period in question.

5.3 The Claimant says she is owed a pay award for the period 1 April 2023 to 30 August 2023.

242. The Respondent does not dispute that the Claimant is entitled to £980 for this period in respect of the pay award granted after her employment ended but with retrospective effect. We accept the Respondent's submissions that to be entitled to the sum the Claimant needs to claim it in the manner she has been directed. She cannot be said to have suffered an unlawful deduction or a breach of contract.
243. Entitlement to the sum in question did not arise until November 2023, i.e. after the termination of the Claimant's employment. In those circumstances we find that there has not been a breach of contract. The Claimant has not taken us to any term of her contract which provides that she is automatically entitled to a pay award in respect of a period of service after employment has ended without having to claim for it in the way that has been explained to her.
244. There is also no valid claim for unlawful deduction from wages for the same reason and because there has not been a payment of wages that is less than the total amount of the wages properly payable by the Respondent to the Claimant on that occasion (ERA 13 (3)).

Employment Judge Woodhead

Date 21 January 2025

Sent to the parties on:

28 January 2025

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For the Tribunals Office

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Appendix

AGREED LIST OF ISSUES

1. Time limits

1.1 The Respondent does not dispute that the claims have been brought in time.

2. Direct sex and race discrimination (Equality Act 2010 section 13)

2.1 The Claimant is a woman and describes her race as Chinese.

2.2 Did the Respondent do the following things:

2.2.1 During the Claimant's extended probation period, Gurpreet Muctor blocked the Claimant's access to resources required to perform her job duties by:

2.2.1.1 Despite managing four staff members, the Claimant did not receive management training. The training courses for manager reporting and manager Personal Development Framework (PDF) were never approved.

2.2.1.2 As a data scientist, the Claimant did not receive the adequate computing resource namely high spec PC to perform her job role however other team members (including other data scientists) were provided with high spec PCs including EK who received an Apple Mac.

2.2.2 Gurpreet Muctor decided to promote male workers (EK) as opposed to promoting the Claimant;

2.2.3 Gurpreet Muctor undermined the Claimant when it came to job opportunities, resources and stakeholder contacts which were related to the Claimant's area of business, by:

2.2.3.1 Before the team workshop organised by the Claimant on 7 July 2023, Mr Muctor added EK and new sessions into the workshop plan one day before the workshop without notifying the Claimant of the changes. During the workshop, Mr Muctor disrupted the organisation of the

meeting without notifying the Claimant of the changes and then ignored the actions the Claimant and Mr Muctor had agreed for the whole team during the meeting.

- 2.2.3.2 On 18 July 2023, Gurpreet Muctor deliberately interrupted the Claimant's work during a discussion meeting and prevented the Claimant from developing 'BI governance work', which was the front-end of the data ecosystem. In comparison, Mr Muctor allowed EK (Data Scientist) to lead all projects and the team including the Smart City Operating system, which is a type of data ecosystem.
- 2.2.3.3 Around 24 July 2023, Gurpreet Muctor instructed Martyn Driscoll (Senior Solution Architect) to send the Claimant an appointment of recruitment and then removed the Claimant and replaced her with Aline Angst (Enterprise Architect/Business Analyst).
- 2.2.3.4 On or around 28 July 2023, Mr Muctor took a proposal prepared by the Claimant to negotiate with stakeholders without the Claimant and then criticised the Claimant's proposal.
- 2.2.3.5 On or around late July / early August 2023, Gurpreet Muctor introduced the Claimant to the delivery manager (Lyn Newton) without giving the Claimant any clear instructions, however, Mr Muctor provided clear instructions to EK (Data Scientist) and [RD] (Data Engineer).
- 2.2.3.6 During the Claimant's extended probation period, Mr Muctor gave more project opportunities to EK (Noise complaints prediction and sensor, Footfall and expenditure, Clean air route, Green Energy Transition project, Social listening, REPORT IT data OS). EK was also asked to coordinate the JIRA dashboard development with senior delivery manager (Amber). In comparison, the Claimant was asked to develop small cell deployment.
- 2.2.3.7 On or around 25 August 2023, Mr Muctor asked the Claimant to cancel an important meeting for MDM development. The Claimant was part of the Footfall and expenditure project. The project included Jon Beeby (Data Engineer), Ivy Chua (Data Curator) and the Claimant (Data Scientist). Mr Muctor instructed EK to lead this project which confused Jon Beeby who did not know who he should work with.
- 2.2.3.8 Mr Muctor excluded the Claimant from several key meetings.

- 2.2.4 Gurpreet Muctor agreed the tasks / targets contained in the Claimant's personal development plan however after nine months of undertaking the work described in the personal development plan, Mr Muctor alleged that the work did not fit into 'D&I core work' and there was no resource for it.
- 2.2.5 Gurpreet Muctor was biased towards the Claimant's male colleagues, who did not share the Claimant's race.
- 2.2.6 Mr Muctor was reluctant to collaborate and share stakeholder resources with the Claimant, however, he created opportunities for EK (Data Scientist) by providing access to resources and stakeholder contacts. This meant that the Claimant was not able to develop work with wider stakeholders which in turn resulted in the Claimant being rejected for a promotion.
- 2.2.7 Gurpreet Muctor provided EK (Data Scientist) with more opportunities than the Claimant and provided EK with higher profile work. This was evidenced through a long project list for EK and a shorter project list for the Claimant. EK was also provided with more resources including devices, people and data.
- 2.2.8 [Mr MJ] set the Claimant up to fail her probation period.
- 2.2.9 Mr Muctor set the Claimant up to fail her extended probation period.
- 2.2.10 The Claimant was bullied by [Mr MJ] when he was her line manager and subsequently bullied by Gurpreet Muctor after he became the Claimant's line manager.
- 2.2.11 The Claimant failed her six month probation period on 5 May 2023;
- 2.2.12 The Claimant's probation period was extended by three months on 25 May 2023;
- 2.2.13 The Claimant failed her extended probation period on 4 September 2023;
- 2.2.14 The Claimant's employment was terminated on 15 September 2023 (with effect from 6 October 2023);
- 2.2.15 The Claimant has not been paid wages owed for October 2023;
- 2.2.16 The Claimant has not been paid accrued but untaken annual leave owed until the termination date (06/10/23)
- 2.2.17 The Claimant received a letter dated 25 October 2023 from the Respondent alleging that the Claimant had received an overpayment of wages for the period 16 September – 30 September 2023 which demanded repayment of £1,156.55.

2.3 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the Claimant's.

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

The Claimant says they were treated worse than EK.

2.4 If so, was it because of sex or race?

3. **Harassment related to sex and race (Equality Act 2010 section 26)**

3.1 Did the Respondent do the following things:

3.1.1 The matters listed in 2.2 of the List of Issues

3.2 If so, was that unwanted conduct?

3.3 Did it relate to sex or race?

3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. **Victimisation (Equality Act 2010 section 27)**

4.1 Did the Claimant do a protected act as follows:

4.1.1 The Claimant alleged that she had been subjected to sex discrimination during the probation appeal meeting on 25 May 2023;

4.1.2 The Claimant alleged that she had been subjected to race discrimination, sex discrimination and harassment during the probation review meeting on 4 September 2023

4.1.3 The Claimant's written grievance dated 6 September 2023 contained allegations of race discrimination, sex discrimination and harassment.

4.1.4 The Claimant alleged that she had been subjected to race discrimination and sex discrimination during the appeal meeting on 21 September 2023

4.1.5 The Claimant alleged that she had been subjected to race discrimination and sex discrimination during the grievance investigation meeting on 26 September 2023

4.2 Did the Respondent do the following things:

4.2.1 The matters listed in 2.2 of the List of Issues

4.3 By doing so, did it subject the Claimant to detriment?

4.4 If so, was it because the Claimant did a protected act?

4.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

5. Unauthorised deductions

5.1 The Claimant says that her annual salary in the period in question was £62,457 (after a pay rise given in November 2023 but backdated to April 2023)

5.2 The Claimant says she is owed salary for the period 1 – 6 October 2023 (the agreed termination date) inclusive

5.2.1 The Claimant says she is owed a shortfall of £187.07 gross. The Claimant calculates this on the following basis:

5.2.1.1 Her weekly equivalent salary is £1,156.50 gross, calculated by reference to an hourly rate of £32.13 multiplied by 36 hours.

5.2.1.2 She was paid £969.43 gross, leaving a shortfall of £187.07 gross.

5.2.1.3 The Claimant has confirmed that she agrees that she was entitled to 1 week's notice and that her employment ending on 6 October 2023 did not constitute a failure to give statutory or contractual notice.

5.3 The Claimant says she is owed a pay award for the period 1 April 2023 to 30 August 2023.

5.3.1 The Claimant says she is owed £980.

5.3.2 The Respondent accepts that the Claimant is entitled to apply for the sum of £980 in respect of a pay award for the period 1 April 2023 to 30 August 2023, and has explained to the Claimant how to apply for the same.

5.4 Were the wages paid to the Claimant on 20 September 2023 less than the wages they should have been paid?

- 5.5 Was any deduction required or authorised by statute?
- 5.6 Was any deduction required or authorised by a written term of the contract?
- 5.7 Did the Claimant have a copy of the contract or written notice of the contract term before the deduction was made?
- 5.8 Did the Claimant agree in writing to the deduction before it was made?
- 5.9 How much is the Claimant owed?

6. Breach of Contract

- 6.1 Did this claim arise or was it outstanding when the Claimant's employment ended?
- 6.2 Did the Respondent do the following:
 - 6.2.1 Fail to pay the Claimant her full salary (i.e. inclusive of the alleged shortfall of £187.07).
 - 6.2.2 Fail to pay the Claimant the retrospective pay award for 1 April 2023 to 30 August 2023.
- 6.3 Was that a breach of contract?
- 6.4 How much should the Claimant be awarded as damages?