



EMPLOYMENT TRIBUNALS

Claimant: Ms S Younis

Respondent: United Colleges Group

Heard at: London Central Employment Tribunal

On: 16, 17, 18, 19, 20 December 2024 and 5 February 2025

Before: Employment Judge Keogh, Ms J Camero, Mr S McLaughlin

Representation

Claimant: In person

Respondent: Mr A Bryant (Counsel)

JUDGMENT

1. The claimant's complaints of direct race discrimination, direct sex discrimination, associative direct religion and belief discrimination and victimisation are all unfounded and are dismissed.

REASONS

Introduction

1. The claimant brings claims arising from agency work and subsequent employment with the respondent of direct race and sex discrimination, associative religious belief discrimination pertaining to two incidents involving access to the college's printing facilities, and victimisation after raising a grievance and then an employment Tribunal claim about these incidents, culminating in the termination of her employment at a probation review meeting.
2. We received a bundle of documents and witness statements from the claimant, and Mr John-Patrick Casey (Assistant Principal for Health, Well Being and Care), Mr Aiden Daley (former Reprographics Officer), Mr James Wilson (Deputy Principal) and Ms Nadia El Atrash (HR Projects Manager) for the respondent. The claimant was permitted to adduce a second, updated witness statement on the first morning of the hearing, for the

reasons we gave orally at that time and summarised below. We heard oral evidence from all witnesses. We received written submissions on the law from Counsel for the respondent and heard oral submissions from both parties.

3. We have considered all the written and oral evidence and the documentary evidence in the bundle to which we were referred and the submissions made to us. If we do not mention a particular fact or dispute in this judgment, it does not mean we have not taken it into account, only that it is not material to our conclusions. All our findings of fact are made on the balance of probabilities. This means that in relation to each factual dispute we have considered whether one party's version of events is more likely than not to have happened. Our decision was unanimous.

The Hearing

4. The hearing took place on 16, 17 and 18 December 2024 with the Tribunal deliberating on 19 and 20 December 2024 (half a day) and on 5 February 2025 in relation to liability only.
5. Prior to the hearing there was an application by the respondent for a strike out of the claim and costs, accompanied by a bundle running to 332 pages, which was said to have been brought on a protective basis due to the claimant's appeal to the Employment Appeal Tribunal against the orders of Employment Judge B Smith made on 3 December 2024, and as a result of the claimant having produced an amended witness statement which the respondent contended was in breach of those orders.
6. In relation to the appeal, the respondent did not apply for a stay or adjournment but noted that the Tribunal could do this of its own volition. If so, an issue would arise as to whether there could be a fair trial. The claimant indicated she was not seeking an adjournment or a stay herself. The Tribunal determined that the subject of the appeal was procedural matters, some of which the Tribunal was being asked to look at in any event. If the Employment Appeal Tribunal was against the claimant the matter would still need to be heard, and the Tribunal did not wish to lose time when neither party were applying for a stay and were ready to proceed.
7. In relation to the witness statement, we heard submissions from the parties. The respondent conceded that it could deal with the additional matters in the witness statement but would need additional time in cross examination. The claimant's position was that the orders made were very tight as regards provision of a witness statement. The longest addition to the statement was in relation to remedy (which was not due to be determined at this hearing in any event). Her dyslexia had impacted on her ability to meet the deadline. We determined that the claimant's condition impacting on her ability to meet the deadline was a material change in circumstances. The prejudice to the respondent in having to deal with additional matters could be minimised by allowing the respondent a full day of cross examination time (i.e. five hours), which was considered by us sufficient to deal with both the limited factual

issues in the case and any credibility issues that might arise from the changes made to the statement. The claimant would have four hours to cross examine the respondent's witnesses, which gave both parties time roughly proportionate to the length of the statements they had to deal with. With those caveats we considered it was in the interests of justice to permit the claimant to adduce her amended witness statement into evidence.

8. Having made those determinations, the respondent indicated its strike out application was not pursued. This left only consideration of the list of issues (discussed below).
9. As the hearing progressed both parties were in fact permitted additional time in cross examination of the other side's witnesses. The claimant needed considerably more time than the four hours allocated, which was a much greater level of flexibility than given to the respondent, permitted to her as a reasonable adjustment as a result of her dyslexia.
10. As a result of the delays to the timetable and the fact that the Tribunal was only available for half a day on 20 December 2024, additional time was required for the Tribunal's deliberations. The parties were asked whether they would prefer a date to be listed for an oral judgment or for a reserved judgment to be given. Both parties indicated a preference for a reserved judgment.

The Claims and Issues

11. The claimant brought three claims in these proceedings, which had been the subject of considerable case management including successive applications for amendments, some successful and some not. The last case management before the hearing was before Employment Judge B Smith on 3 December 2024, who finalised a list of issues.
12. The claimant disagreed with this list, and it is presently the subject of an appeal to the Employment Appeal Tribunal. At the outset of the hearing the claimant indicated she was still dissatisfied and the Tribunal explored what it was that she still wanted to add, by reference to her own amendments proposed to the list of issues before Employment Judge Smith. The main dispute was in relation to allegations of harassment by management which the claimant alleges was because of her protected disclosures. She had previously been told by Employment Judge Norris that this could be considered as background. The purpose of a List of Issues was explained to the claimant, and in particular that it should only contain the factual and legal disputes the Tribunal needs to resolve to determine whether the claims properly pleaded are successful or unsuccessful. There were no pleaded claims for harassment as a victimisation detriment (an application to amend the claim to include this having been unsuccessful). However it was explained that if those allegations were relevant as background to the claims before the Tribunal, for example to show the relationship between the parties or whether there was a discriminatory environment, that could be explored in evidence. Having had that explained, the claimant did not

pursue the matter further. The Tribunal then read the claimant's witness statement, and noted that it contained numerous allegations of 'victimisation' in relation to management actions throughout the claimant's employment, most of which had taken place before she raised her grievance complaining of discrimination (the first alleged protected act). The test the claimant was required to meet under section 27 was explained to her, and again it was reiterated that while these matters might be relevant background, the Tribunal would not be considering findings of victimisation outside of the pleaded case and list of issues. The respondent indicated that while it did not agree with those allegations, it would not be cross examining on them.

13. There was a further long running dispute as to when the respondent first received notification of the first claim, the respondent having asserted that it did not receive the claim form when it was sent out, only when it was sent by the Tribunal after a notice of preliminary hearing was received and enquiries made. This dispute was potentially relevant to the victimisation claim because the claimant relied on the presentation of the first claim as a protected act. It was again explained to the claimant that this was not a matter for the List of Issues but if she still contended that there was a relevant dispute on this point it could be explored in evidence.
14. In the circumstances no application was made to amend the List of Issues. Minor amendments were made during the course of the hearing to better clarify the legal tests and to correct an error to a date. The final list before us was therefore as follows:

Direct Discrimination – section 13 Equality Act 2010

The claimant is British Pakistani.

1. *Did the Respondent's Aiden Daley refuse to allow the Claimant to use the printer in October 2021?*
 - 1.1 *If so, did this amount to less favourable treatment of the Claimant by the Respondent because of her (the Claimant's) sex or race and/or because of the religion or belief of the student by whom she was accompanied during the incident in question? The correct comparator is a hypothetical male, not of Pakistani-British origin, and accompanied by a non-Muslim student, seeking to use the printer in question.*

The claimant submits that the student was wearing a headscarf and this is evidence of their religion or belief.
 - 1.2 *If the answer to (1.1) is yes, is this complaint out of time?*

- 1.3 *If it is out of time, was there conduct extending over a period such as to bring the claim in time?*
- 1.4 *If not, would it be just and equitable for the Tribunal to extend time so as to bring it in time?*
2. *Did the Respondent's Aiden Daley refuse to allow the Claimant to use the printer on 5 May 2022?*
- 2.1 *If so, did this amount to less favourable treatment of the Claimant by the Respondent on the grounds of her sex or race? The correct comparator is a hypothetical male, not of Pakistani-British origin.*

Victimisation – section 27 Equality Act 2010

3. *Did the Claimant do a protected act by:*
- 3.1 *raising her grievance on 5 May 2022; and/or*
- 3.2 *bringing her first Tribunal Claim on 22 August 2022?*

The Respondent submits that neither were protected acts because they were false allegations and raised in bad faith.

4. *Did the Respondent:*
- 4.1 *fail to investigate the Claimant's grievance properly between 5 May 2022 and 15 June 2022 thereby submitting her to a detriment; and/or*
- 4.2 *fail to deal with the Claimant's grievance appeal properly between 20 June 2022 and 15 July 2022 thereby submitting her to a detriment?*
5. *If the Claimant's 5 May 2022 grievance was a protected act and the answer to either (4.1) or (4.2) is yes, did the Respondent subject the Claimant to either of detriments because she did that protected act?*
6. *If the Claimant's 5 May 2022 grievance and/or 22 August 2022 tribunal claim were protected acts, was the Claimant's dismissal on 1 September 2022 because of one of those protected acts?*

Remedy for discrimination or victimisation

1. *Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?*
2. *What financial losses has the discrimination caused the claimant?*
3. *Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?*
4. *If not, for what period of loss should the claimant be compensated?*
5. *What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?*
6. *Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?*
7. *Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?*
8. *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
9. *Did the respondent or the claimant unreasonably fail to comply with it?*
10. *If so is it just and equitable to increase or decrease any award payable to the claimant?*
11. *By what proportion, up to 25%?*
12. *Should interest be awarded? How much?*

The Facts

Temporary appointment

15. The claimant first started working for the respondent through an agency on 29 September 2021 as a Fine Art Lecturer on a temporary, full-time appointment.

The respondent and the Paddington campus

16. The respondent is a further education college, comprising more than one campus. The claimant worked at the Paddington campus.

17. We have been shown photographs of parts of the Paddington campus. On the ground floor the main entrance leads through to a foyer, stairs and elevators. On the right-hand side of the foyer is a studio where the claimant sometimes worked, and next door to this is the reprographics room.
18. The art and design department was on the third floor, where the claimant also held classes.
19. We accept the evidence of Mr Daley that there were around 13 printers in the building for general use of students and staff, provided they had an activated card. The claimant did not appear to dispute this, save in relation to the incident in October 2021 to which we will come in due course.
20. We also accept Mr Daley's evidence that the printers in the reprographics room only were not for general use and access to the room was for a limited number of staff, via a locked door with swipe card access and a bell for gaining entry, which can be seen in the photographs. The printers in that room are designed for higher volume printing, and the work of the reprographics room also entailed printing examination papers and other confidential information. It is obvious that a further education college would need a room of this nature, and that access would have to be protected due to data protection requirements given the confidential information being reproduced. We also accept the evidence of Ms El Atrash that this room was situated on the ground floor for health and safety reasons due to the volume of electrical equipment in there which presented a potential fire hazard.

Incident 1 – October 2021

21. We accept Mr Daley's evidence that he first met the claimant in September 2021, which would have been the first day or two of her work with the respondent, and introduced himself. It is more likely that he would remember this than the claimant, as the claimant was a new member of staff to him, whereas the claimant is likely to have met a number of members of staff around that time. The claimant challenged this on the basis that there was no documentary evidence in support of this, but it is common sense that this sort of interaction would not typically have been recorded in any way.
22. The claimant's first recollection of Mr Daley is in October 2021 where it is not in dispute that there was an incident at the printer on the third floor. The claimant's account of this incident as given in her witness statement is that at that time she had difficulty using printers due to her staff ID card not having been activated. She went to the third floor to photocopy work for a student, whom she says was wearing a headscarf. She saw Mr Daley using a large printer and asked if she could use it or if he could print her something in colour. She states he sharply refused, stating "*It's not for the use of Art and Design*". She explained her manager Mr Casey had told her the printers on that floor were for Art and Design, but he insisted it was not for Art and

Design or students. She showed her staff ID, but he maintained his refusal without explanation. When she asked if she could quickly make a photocopy, he agreed but once again stressed she shouldn't use it.

23. Mr Daley's version of events as given in his statement is that he was doing his rounds from the ground floor upwards and when he got to the third floor, he saw the claimant at the printer looking stressed. She was with a male student with brown curly hair. As the claimant was new to the college and her card was not working, he offered her his card so she could gain access to the printer. As she used it, he noticed she was using various editing functions, such as altering the colour in the settings. He was conscious this would be time consuming, which was an issue as it was a communal printer. He suggested she scan the image and edit it on a computer, rather than adjust the printer settings. The claimant's demeanour changed at this. She became argumentative and accused him of shouting at her, and said something to the effect that "*I can use that machine if I want.*" He stepped away from the situation.

24. We prefer Mr Daley's account of this incident for the following reasons:

25. The claimant's version of events has altered substantially over time. Her first complaint about this was an oral complaint to Mr Casey, who accepted in cross examination that the claimant had alleged Mr Daley had said the printer was not for the use of Art and Design. Mr Casey recalled in evidence her saying this and him responding that he said he didn't know why Mr Daley would say that, and arranged for her card to be activated. It was put to him in cross examination that he also said to the claimant that he would speak to Mr Daley's manager, which he denied. We note that in the claimant's summary of claims to the Tribunal in May 2023 it is suggested that Mr Casey said he would speak to Mr Daley, rather than the manager. The claimant's recollections are therefore not consistent.

26. The claimant's first written complaint was her email of 5 May 2022 in which she says having seen Mr Daley at the printer she asked if he could kindly print something in colour, and he said the printers were not for the use of art and design. There is no mention of the fact that Mr Daley did in fact give her his card so that could do some printing, which is a surprising omission. There is no mention of the student. It is in this document the claimant suggests that Mr Daley '*is racist or has an issue with women*'.

27. In the grievance meeting on 27 May 2022 her account was that she had asked Mr Daley for support in printing and he responded that it was not for the use of art and design. She told him, "There's no need to be rude" to which he made no response. This detail is not mentioned in any subsequent document. In this account there is again no mention that Mr Daley did in fact assist her. The claimant mentioned in this meeting that she spoke to Mr Casey about the incident, but does not suggest that he agreed to speak to either Mr Daley or his manager about it.

28. The claimant's grounds of appeal simply repeat the version in the email of 5 May 2022. There are no details given in the subsequent appeal submission, save that the claimant asserts she was able to give exact dates of the incident, which in fact has never been provided.
29. The claimant's claim form attachment is the same again as the email of 5 May 2022. At the preliminary hearing on 11 April 2023 before Employment Judge Glennie the claimant asserted for the first time that the discrimination complaints (plural) were also as a result of religion. The first mention of the student wearing a headscarf is in the document 'Claimant's summary of claims' which was in response to Employment Judge Glennie's cases management orders, sent to the Tribunal around 1 May 2023. This states, "I, a South Asian female tutor, was on the 3rd floor in the Art and Design department with a Muslim student who was wearing a headscarf, who I teach, wanting to print her work on the printers..." In this document she accepts for the first time that Mr Daley did let her use the printer. At a preliminary hearing on 30 June 2023 the claimant applied successfully to amend her claim to rely on religion or belief in addition to race and sex. It is notable that it is recorded at paragraph 22 of the case management summary that the claimant's explanation for not including this characteristic in the claim form was that it was only on reflection that she had thought that her religion had played a part (emphasis added), though we note the final list of issues relies on the religion of the student.
30. It is apparent from this history that the claimant's account has changed substantially over time, both in the details given and in the alleged reasons for Mr Daley's behaviour. This makes her account less credible and less reliable. The addition of detail in relation to a Muslim student wearing a headscarf in particular suggests that the claimant's account has been elaborated upon over time. If this was true, it is surprising this detail was not mentioned earlier.
31. By contrast, Mr Daley's account has not substantially altered. While he does not mention the student with the claimant when he was first asked about this matter, this is not surprising because the claimant had not mentioned the student's description at that point or suggested there was any discrimination based on religion and so it was not in issue. We accept his evidence it did not seem an important detail at the time. We found generally Mr Daley was a straightforward and honest witness. He was willing to concede where he had made errors in his evidence due to the passage of time, but had clear recollections when it came to people and names.
32. Mr Daley's account is more likely to have occurred. As the printers were for the use of all staff and students provided they had an activated card, and both the claimant and Mr Daley agree that there at least one student present, it is unlikely that Mr Daley would have suggested that the printer was not for the use of Art and Design, especially when the printer was on the same floor as that department. The printing policy was at the core of his role and he would have been intimately familiar with it.

33. We find Mr Casey's evidence was also persuasive. He accepted that the claimant had spoken to him about the incident, but not that he had agreed to take it further. His concern was to get the card activated. We prefer his clear evidence that this conversation took place in a one to one meeting, rather than in passing as the claimant suggested. We find that although the claimant did suggest in this conversation that Mr Daley had said the printer was not for the use of Art and Design, it is more likely than not that she misconstrued the conversation with Mr Daley, having become annoyed at his suggestion that she ought not to use the printer settings to alter her document, but should use a computer instead.

Commencement of employment

34. The claimant's temporary appointment ended on 3 November 2021. The claimant commenced formal employment with the respondent on 2 December 2021 as an Hourly Paid Lecturer. Her contract of employment specified that the post was subject to satisfactory completion of a 12 week probationary period. That period was therefore due to end around 24 February 2022. Her hours of work were done on Thursday and Friday each week. The claimant was co-teaching the Level 1 and 2 Art and Design Diploma courses with other colleagues.

35. On the claimant's own account there were some communication issues with her colleagues early on. This led her to set up a Teams meeting in January 2022 to discuss the matter.

36. On 15 December 2021 a male colleague the claimant co-taught with emailed Mr Casey making a complaint about the claimant alleging that she had made an inappropriate comment to him. We make no findings as to whether this complaint was valid or not. We note Mr Casey held a one to one meeting with the claimant the following day on 16 December 2021 but there is no mention of this complaint in his note.

37. The claimant has disputed the accuracy of the notes presented by Mr Casey as being his running note of one to one meetings held with him. We accept Mr Casey's account given in cross examination that up to January 2022 he had not had regular fortnightly meetings with the claimant, but that when issues started to arise at the end of January 2022 he started to have regular meetings with her. We note there was only one meeting in December 2021 but from 13 January 2022 they were roughly weekly in January and February 2022 and fortnightly from March 2022. This suggests he did start to take a more structured approach to the claimant's line management. The notes were first seen by anyone else at the grievance appeal stage when Mr Casey sent them to Mr Wilson, however Mr Casey says that this document was a running note, similar to those he kept for all other staff, and had not been tampered with. We have reviewed the content of the notes to see whether there is any evidence that they may have been fabricated. The notes include both negative and positive points in relation to the claimant, for example a note that one of her students with mental health concerns had been sent by her for support. Mr Casey accepted in cross examination that

not all complaints which were discussed in the claimant's later probation review are recorded in this document. We find this in fact makes the document more credible rather than less. If it was fabricated deliberately with a view to maliciously highlighting complaints falsely said to have been made against the claimant, it is more likely that all the complaints being relied upon would have been included. We found Mr Casey to be an honest and credible witness and can find no reason why he might have been motivated to make such false accusations or to prepare a lengthy document containing many other details for such a purpose. In the circumstances we find that this was a genuine and contemporaneous document created by Mr Casey as a running note for him to keep a record of the broad topics of discussion in the various one to one meetings held with the claimant.

38. The record includes regular notes in one to one meetings about both staff and student complaints. We find that these matters were brought to the claimant's attention during one to one meetings. We accept Mr Casey's evidence in cross examination that he only gave broad details of student complaints to the claimant rather than specifics as the students did not want to be identified.
39. A further email chain we have been referred to is with the same male colleague on 24 January 2022, where a dispute arose between them about the content of lessons the claimant had taught in her colleague's absence and what she should be teaching in her lessons going forward. At the end of this exchange her colleague states:

"I'm not sure I agree with all of this. let's discuss. You have already created a separate brief and to be quite frank, I also want to raise the issues that have come to my attention from level 1 students concerning your teaching style. Shouting at students in class and various other actions which I do not find acceptable or condone."

40. This led Mr Casey to intervene, asking the claimant to meet him ahead of the team meeting, and to say that the *'back and forth needs to stop now'*.
41. The claimant suggests this pre-meeting did not take place. We prefer Mr Casey's recollection that there was a meeting between himself, the male colleague and the claimant. This was not a one to one which is why it does not appear on the one to one notes around that time.
42. Around this period issues also arose with a female colleague of the claimant's. A meeting was held about the disputes between them on 2 February 2022 with Mr Casey. An email dated 3 February 2022 from Mr Casey to the claimant notes that in the meeting various targets were set for her:

"Below are the three targets we went through in our meeting yesterday afternoon. These will be reviewed in a meeting on Wednesday 2nd March:

- 1. Ensure your emails to colleagues are professional and meaningful. Avoid language that could be misunderstood and if a face-to-face meeting would be more efficient, organise this with the relevant staff member.*
- 2. Ensure your communication with students is respectful and professional. They are our number one priority and we must do all we can to ensure the student experience is of the highest standard possible.*
- 3. Resolve issues around the Level 1 & 2 assignment briefs, and liaise with the teaching teams to develop a weekly plan to ensure you know what you are teaching ahead of time.”*

43. Again we make no findings as to the dispute between the claimant and her colleague, but simply note at this point a number of issues had been raised with the claimant and targets had been given to her to meet.
44. On 25 February 2022 the same female colleague raised an issue with the claimant by email in relation to the attendance levels at her classes, which were said to be low. We note that in the one to one on 11 March 2022 Mr Casey notes that he shared the attendance policy with the claimant and her role as a class teacher.

Incident 2 – 5 May 2022

45. Mr Daley says that there was a further incident with the claimant in April 2022, prior to the incident on 5 May 2022 which is the subject of the complaint. He states that on this occasion the claimant informed him that she had been using a printer and there was a paper jam or some issue with the machine. He thanked her for letting him know and assured her the problem would be addressed. The claimant was dissatisfied the machine would not be fixed immediately. Mr Daley was able to fix the printer within around 20 minutes, and notes that the claimant was able to use a different printer in the meantime, there being 13 available in the building.
46. We accept his evidence in relation to this incident. He provides clear detail, and there is no reason to make up an incident of this nature. We also accept his evidence in cross examination that for him this was an everyday interaction. He is likely to recall it because the claimant had expressed dissatisfaction when he considered he had fixed the issue very promptly. The fact that the claimant cannot remember this small interaction does not mean it didn't happen. Nor would we expect it to have been recorded in writing anywhere as the claimant suggested in her cross examination of Mr Daley, however we do note that Mr Daley recalled this incident during his grievance interview on 27 May 2022.
47. The next incident between the claimant and Mr Daley occurred on 5 May 2022. Again there is a dispute between them as to what occurred.
48. In her witness statement the claimant contends that she needed to print a student's work. There was no printer in the studio (which is where she was working) and the one she normally used in the Information Centre was unavailable. As she was not able to leave her class for long she went next door to the reprographics room. She alleges that she saw a contracted staff

member waiting outside who allowed her to go ahead of him. When Mr Daley opened the door halfway, she asked if she could use the printer, explaining she was teaching next door and urgently needed to print something for one of her students. Mr Daley stood in the doorway blocking her entry and aggressively refused, saying "No". She asked for clarification and he repeated the refusal without providing an explanation. She felt his conduct was intentionally condescending and undermining.

49. Mr Daley's account of the incident in his statement is that the claimant was in the reprographics room with Mr Lavery from the respondent's building maintenance company. Mr Daley goes on in his witness statement to say that it is uncommon for anyone to knock on the door for printing services as staff receive a comprehensive induction pack which includes guidelines for printing on joining the respondent.

50. He recalls that the bell rang and Mr Lavery answered the door to find the claimant standing outside with a stack of papers. She requested to do some photocopying. He informed her she could not enter as the reprographics room was not accessible to staff or students, and that she had access to all the other machines in the building. She asked if he could make an exception and he said he could not, following which the claimant remarked to the effect of, "I'm staff, I should be able to use it," and "You're so rude". She then stormed off. Mr Lavery commented afterwards that the only person who had been rude was the claimant.

51. Mr Daley accepted in cross examination that Mr Lavery must have been outside the room, not inside. Save for that detail, we prefer Mr Daley's account of this incident, for the following reasons:

52. An account of the incident was provided by Mr Lavery on the same day, having been requested his account by Mr Smith after the claimant complained. His account was as follows:

"Earlier today I went to see Aiden at the reprographics room to ask if I could get some printer paper.

I knocked on the door and Aiden was at his computer, he asked me to wait a minute which I did.

While I was waiting a lady came to the repo door and asked if someone was there, I said Aiden was there, he will be a minute.

Once Aiden had come to the door I invited the lady to go first.

She then asked Aiden to photocopy some pages in the repo room and Aiden said he couldn't and that the repro room is for the college use only.

The lady asked if she could use the room once and Aiden advised the lady that she should use one of the thirteen machines around the college.

The lady then said to Aiden “there is no reason to be rude, you are a very rude man..”

I have to say Aiden was not rude to the lady. She seemed upset that Aiden hadn't done what she wanted. It was her being rude, not Aiden.”

53. We find this account of Mr Lavery, which accords much more closely to the account given by Mr Daley to that given by the claimant, is an independent account. The claimant suggested in her appeal submission on 12 July 2022 that they were friends, such that *“of course he is going to take his side”*. What the claimant is implying by this is that both Mr Daley and Mr Lavery have falsely created an account together. The claimant accepted in cross examination however that she did not know either of them well. She said she saw them being friendly with each other but this is very different to her suggestion in the appeal submission. There is nothing in the evidence to suggest Mr Daley and Mr Lavery had a prior friendship or that Mr Lavery had any reason to falsify what he said in his email.

54. The claimant's first written account is in her email to Mr Smith on 5 May 2022, after her account of the alleged incident in October:

“ ...

2) Today I was teaching in the downstairs art studio and normally I would go and print in the information centre. The centre was closed due to an incident. I knocked on [Mr Daley's] door and asked if I could use the colour printer quickly to print off a students work as I was just next door. In front of another member of staff he refused to let me in and use it.

I firmly believe he is racist or has an issue with women. His behaviour is not acceptable at all.”

55. This account in fact broadly accords with AD's account and Mr L's account, save for suggestion earlier in the email that Mr Daley was *‘incredibly rude and dismissive’*. The email is set out in full below.

56. The second account given by the claimant was in her grievance meeting. More detail is provided. She says Mr Daley stated she could not access the printers in the reprographics room. No reason was given and it was rude not to provide it. This is a very different account to that given in her witness statement, where the claimant contends that he simply said *“No”*, and that she requested clarification and there was a further refusal.

57. The claimant's account in her appeal against the grievance outcome and in her attachment to the claim form repeats the content of the 5 May 2022 email.

58. The account given in the claimant's witness statement was then altered in cross examination, when she suggested that rather than opening the door halfway Mr Daley had his foot in the door. This change to her account was made when it was suggested to her she would have been able to see the

type of printers in the room, namely big printers obviously for higher volume printing.

59. The claimant in cross examination refused to accept that she said to Mr Daley *“There’s no reason to be rude”* as recorded by Mr Lavery, as this was *‘not in her vocabulary’*, however we note this is almost exactly the same phrase that she herself said in the grievance meeting on 27 May 2022 that she said to Mr Daley in October 2021. On her own account therefore this is language she uses.
60. The only change to Mr Daley’s account is that he accepted in cross examination Mr Lavery did not come into the room and he was wrong about this in his statement. In his interview on 27 May 2022 Mr Daley states the interaction was observed by a third party contractor but does not say where Mr Lavery was standing. His witness statement is therefore the first time he has had to recall this and may simply have got this wrong with the passage of time. Mr Daley’s account otherwise consistent.
61. For all these reasons we consider Mr Daley’s account to be more reliable than that of the claimant.

Grievance 5 May 2022

62. After the interaction with Mr Daley the claimant sent a message to the Creative Industries Staff Teams chat:

“Hi Guys, Is it just me or has anyone else had issues with Aidan Daley? Since I have been at CWC he has been incredibly rude and dismissive when I have asked for his help”

63. We accept Mr Casey’s evidence that this chat included 48 teachers and 5 managers, and that he did not monitor it regularly. We find that even if he had seen this message he would not have appreciated it was addressed to management or required his immediate intervention. It does not say, as the claimant suggested in cross examination, that she was looking for managerial support, nor does it give any details of what she now says occurred at the reprographics room.
64. Around half an hour later, the claimant sent her email of complaint about Mr Daley to his manager, Mr Smith:

“I am reporting a member of your staff Aidan Daley.

Since I have been at CWC as a member of teaching staff in Creative Media your colleague Aidan Daley has been incredibly rude and dismissive to me.

- 1) *Back in October last year I did not have access to the printers on 3rd floor, Aidan was printing something at the big printer near the art and design resources department. I asked him if he could kindly print something in colour for me. He snapped at me in front of my student and said that the printers were not for the use of art and design.*

2) *Today I was teaching in the downstairs art studio and normally I would go and print in the information centre. The centre was closed due to an incident. I knocked on his door and asked if I would use the colour printer quickly to print off a students work as I was just next door. In front of another member of staff he refused to let me in and use it.*

I firmly believe he is racist or has an issue with women. His behaviour is not acceptable at all.”

65. The next morning Mr Smith replied that he would investigate. He also sent an email to Mr Casey asking to discuss the matter. He must in fact have started investigating before this email, because Mr Lavery’s email account was sent to him at 3.25pm on the afternoon of 5 May 2022.

66. On 6 May 2022 the claimant emailed Mr Daley about a student’s request for printing. She copied in a male colleague and Mr Casey. Mr Daley replied:

“All files have to be uploaded via the online portal as a print request. Please come and see me on Monday morning when you get in and I will show you how to do this. I will then print them out for Aisha.

Have a great weekend.”

67. The claimant put to Mr Casey in cross examination that she was forced to have this communication with Mr Daley and that by copying him in Mr Casey ought to have realised that having just put in a grievance she was looking for support. We accept Mr Casey’s reading of the email that none of that is evident in the content of the email.

68. We find that the claimant’s expectation that Mr Casey would realise that she wanted him to intervene from her brief message sent to Teams on 5 May 2022 or that by copying him into the email to Mr Daley on 6 May 2022 that she wanted support and not to have to communicate with Mr Daley is unreasonable. In any event the communications between Mr Daley and the claimant on 6 May 2022 were perfectly polite and to the point.

69. The claimant contends that on 19 May 2022 she was given a ‘verbal promotion’ by Mr Casey during a brief meeting, namely that he offered for her to teach the Foundation course the next term. We find that the conversation did take place, as Mr Casey accepted in cross examination. However, we also accept Mr Casey’s evidence that teaching the Foundation course did not amount to a promotion in any way. It was simply teaching one course rather than another.

70. The grievance was escalated to Mr Nick Clarke, Assistant Principal. A grievance investigation meeting was arranged for 27 May 2022. The claimant was accompanied by a colleague. We have not heard evidence from Mr Clark. We accept the claimant’s evidence that Mr Clarke was initially hesitant about the claimant’s colleague being present but did agree.

He asked the claimant questions. She requested a copy of his hand written notes, and he said he would send her a typed version.

71. On 10 June 2022 the claimant emailed Mr Clark seeking notes of the meeting and asking what the next stage was. A reply was sent to her by Mr Casey stating that he would be sharing this in their one to one meeting that day. At the meeting Mr Casey provided the claimant with Mr Clarke's typed notes and the outcome, namely that the grievance was not substantiated. It is not clear exactly what was said to the claimant in this meeting, however we note Mr Clarke had typed up his recommendations and conclusions as follows, which it appears from his later grievance outcome letter was provided to the claimant during the meeting:

"Recommendations & Conclusions

The accusation of racism and sexism is unsubstantiated. It's inappropriate for SY to make assumptions of racism and misogyny based on the limited interactions with AD.

There's no evidence to conclude that Ads comments and behaviour towards SY can be construed as rude or inappropriate.

It's not clear whether SY has had the guidance on how they should access reprographics services for themselves or their Art students. Further guidance from SY's line manager is needed to set expectations about reprographics services."

72. The claimant asked how she could take the matter further and Mr Casey advised her to speak to HR. The claimant was upset during this meeting.
73. The claimant met with HR Manager Ms El Atrash the same day, and we accept Ms El Atrash's evidence that the claimant was upset and her communications heated. Ms El Atrash asked her to forward her complaint and suggested that the claimant took the remainder of the day off work. The claimant forwarded her grievance on the same day.
74. Ms El Atrash emailed the claimant later that day sharing contact details for the EAP support programme the respondent offered.
75. On 13 June 2022 Ms El Atrash emailed the claimant to advise her that as her grievance had not been upheld the next step was for her to appeal, and that she should put this in writing.
76. On 16 June 2022 the claimant requested a meeting with Ms El Atrash to go over the process in more detail.
77. We accept Ms El Atrash's evidence that in the meantime she had been concerned that only a verbal outcome had been given, and arranged for Mr Clarke to prepare a formal grievance outcome. This was prepared and sent to the claimant.

78. We accept Ms El Altrash's account of what happened in this meeting, which is supported by her minutes of the meeting. She discussed with the claimant the process of how to appeal the grievance outcome. The claimant requested that Mr Daley be moved, and Ms El Atrash explained that reprographics had a set room and could not be moved. Various proposals were made to accommodate the claimant, including a change of room for her and people to accompany her to classes for the duration of the grievance. The claimant requested that a person of colour should be on the panel for her appeal. At some point thereafter she also requested that the panel should include a woman.
79. The claimant prepared a written appeal dated 20 June 2022.
80. On 23 June 2022 the claimant emailed Mr Casey about her probation review. He replied he was not sure it was going to happen that day due to his workload.
81. We accept that the claimant chased up what was happening about her appeal on around 30 June 2022. We do not have a copy of the email but it is referred to in later correspondence.
82. A probation review meeting was arranged by Mr Casey for 4 July 2022 however he cancelled this on 1 July 2022, emailing the claimant to say that it clashed with another meeting.
83. On around 5 July 2022 Ms El Atrash invited the claimant to an appeal hearing to be held on 14 July 2022, which was 11 working days after sending the appeal. We accept Ms El Atrash's evidence that the appeal could not be arranged sooner because it took time to find suitable individuals to meet the claimant's requested panel composition.
84. The claimant declined a hearing on this date. Ms El Atrash offered the 15 July 2022. The claimant responded that she was not available for the next two weeks. Ms El Atrash responded as follows on 8 July:
- "Your grievance raised has serious allegations against an individual and you disagree with the outcome of the initial investigation and have requested an appeal. Therefore the allegations are still live against the named individual and we cannot have an inordinate delay to hear the appeal. With this in mind, you have the option to attend face to face with the nominated appeals manager or alternatively you can put your reasons for appeal and any evidence you may have in writing and the appeals manager will consider these in your absence. This appeal hearing would proceed and minutes be taken and shared with you following the meeting."*
85. The claimant replied the same day that she had commitments at another teaching institution, and that her union representative was on leave until 23 August 2022. She requested the appeal be postponed until the next term (in September). She wanted to attend in person.

86. Ms El Atrash replied the same day reiterating her stance that the hearing could go ahead in person or evidence and statements could be provided instead, noting the difficulties there had been in arranging the ethnic and gender mix the claimant had requested for the panel.
87. The claimant replied she would be seeking legal advice.
88. Ms El Atrash asked whether the claimant would be attending or submitting in writing the following week. The claimant said she would not be attending and would not submit a statement in writing.
89. In the meantime on 7 July 2022 the respondent's Staff Award Ceremony took place. Mr Daley was given award for 'Excellent Customer Service'. Ms El Atrash received an award for 'Outstanding Service Delivery'. Assistant Principal Mr Bobat, who was peripherally involved in the claimant's grievance, also received an 'Outstanding Service Delivery' award.
90. The claimant alleges that these awards amounted to a '*culture of systemic cover-up*' and felt like a collective dismissal of her concerns and reinforced an institutional culture of denial and exclusion. She placed a great deal of focus on these awards in her cross examination.
91. We accept Ms El Atrash's oral evidence as to the way the awards worked. Her explanation is common sense and there is no evidence to suggest why she might be dishonest about this detail. The assistant to the chief executive emailed all staff on 16 June 2022 to inform them nominations were open. All directly employed staff, amounting to around 600 individuals, could nominate each other. The nominations were then sent to the Chief Executive and Group Principal, Mr Stephen Davis. The nominations were discussed with the strategic leadership team, and Mr Davis would have the final say. Mr Daley received nominations in three categories from 7 members of staff, 4 women and 3 men with diverse ethnicities.
92. The claimant's suggestion that these annual staff awards were deliberately manipulated in order to somehow cover up or dismiss the grievance she had raised is wholly unsubstantiated. The staff awards were nothing to do with the claimant. The claimant's allegation would require collusion at the highest levels of the respondent's organisation to compromise staff nominated awards in order to send some message to the claimant about a grievance they would not themselves have been concerned with or involved in. We find it wholly unreasonable that the claimant would reach such a conclusion.
93. A further arrangement was made for the claimant's probation review to take place on 8 July 2022, which was the last day of term. We accept Mr Casey's evidence that he postponed the review again on that day, firstly because it was a very busy day being the last day of term, and secondly because he had been advised by HR to leave the probation review until after the grievance appeal had been concluded. It may have been more transparent

if the claimant had been advised of this recommendation, however the decision to resolve the grievance first was not unreasonable.

94. The claimant commenced ACAS early conciliation on 8 July 2022 and obtained a certificate on 11 July 2022.
95. On 12 July 2022 Ms Claire Collins, Director of People & Communications, who was chairing the appeal, emailed the claimant noting the ACAS guidance on rearranging grievance meetings requiring a meeting to be rearranged on a single occasion within 5 days where the employee's chosen companion is unable to attend, reiterating the reason why the appeal had not been convened when the claimant was available, namely due to arrangements to provide the claimant's preferred panel composition, and reiterating the offer to attend in person or provide submissions in writing.
96. The claimant emailed in reply later that day attaching a written statement.
97. The claimant's grievance appeal hearing took place on 14 July 2022. The claimant did not attend. Minutes were taken which show there was a full discussion between the two panel members.
98. A grievance appeal outcome was sent to the claimant on 15 July 2022. The outcome conceded that the grievance process could have been expedited in a more timely way, however it was concluded that this did not materially impact the outcome. The panel had found no evidence that the claimant had been discriminated against, and the appeal was not upheld.

The claimant's probation review and dismissal

99. The claimant presented her claim on 22 August 2022.
100. On 30 August 2022 Mr Casey emailed the claimant to invite her to her probation review:
- "This is an invite to your probation review meeting, where we will review your performance since your direct employment with the college from January 2022.*
- There are some serious concerns that will be addressed in the meeting, and it may be the case that your employment is not continued."*
101. On 1 September 2022 Mr Casey sent the claimant a document prepared for her probation review. This noted that attendance at the claimant's courses had been far below the respondent's benchmark, that there had been numerous student complaints against the claimant, and that there had been ongoing work relation issues with all but one of the Art team making complaints about her behaviour and attitude.

102. The review meeting took place the same day. The claimant was accompanied by a colleague. The other attendees were Mr Casey, Mr Bobat, Ms El Atrash, and a notetaker from HR. We have been provided with and have considered the minutes of the meeting which are very full. The outcome of the meeting was that the claimant's employment was terminated with immediate effect and pay in lieu of notice.
103. On 9 September 2022 the claimant appealed against her dismissal. In her appeal she asserted that the accusations of student complaints were false and malicious, and had been made up with malicious intent to damage her character and reputation as a teacher. She asserted that there was discrimination and that she was being victimised due to bringing an employment tribunal claim and raising complaints of discrimination in the past.
104. The appeal hearing took place on 28 September 2022, chaired by Mr Wilson. The claimant attended and the minutes demonstrate a full discussion of her appeal points took place. Mr Casey attended to explain his decision and the claimant had the opportunity to put questions to him.
105. There was a delay in the outcome being provided and it was sent to the claimant on 18 October 2022. The dismissal was upheld.
106. We accept Mr Wilson's evidence that at the point he was dealing with the appeal he was aware that the claimant had lodged a grievance but not the content of it. He had deliberately kept out of the matter in case he might be called upon as a more senior person to address it.
107. In the outcome letter Mr Wilson asserts that the respondent was not aware that the claimant had brought an employment tribunal claim until 12 October 2022, more than a month after dismissal. The claimant has forcefully and repeatedly asserted that this is untrue, and that the respondent was notified of the claim by the Tribunal by a letter dated 27 September 2022.
108. The notice of claim is indeed dated 27 September 2022. We note this is well after 1 September 2022 when the decision to dismiss was taken. We have seen a chain of emails starting on 10 October 2022 in which HR sends a notification of a preliminary hearing to the respondent's solicitors. The solicitor then emails the Tribunal the same day indicating that they were instructed for the respondent, and that the respondent had received the notice of hearing but not notice of the claim. It was requested that copy of the claim and notice was sent urgently. The Tribunal sent this on 12 October 2022, which corresponds to the date given by Mr Wilson.
109. We accept the respondent's position as noted in this correspondence that for whatever reason the notice of claim sent on 27 September 2022 had not come to the respondent's attention. There may be any number of reasons for this, including post going astray in the internal system. This is not uncommon and the Tribunal regularly deals with applications for

extensions of time to present responses on a similar basis. There is no logical reason why the respondent would ignore the claim if the notice of claim had come to their attention. By that time they had already dismissed the claimant. Solicitors were promptly instructed to deal with the matter once notification of the hearing was received and there is no reason to suggest the same would not have happened if the claim form had been received at the time it was sent.

110. We accept that Mr Wilson did consider the content of the dismissal to ensure that it was not influenced by the grievance and that it was his view that the dismissal was fair. As set out in his outcome letter, he found that the evidence before him was of a pattern of behaviour from the outset of the claimant's employment that had given rise to multiple complaints from staff and students alike. He was comfortable that the decision to terminate the claimant's employment was appropriate and based on genuine concerns about her attitude and the impact it was having on colleagues and students.
111. We note there are no allegations of discrimination against Mr Wilson or in relation to the way in which the dismissal appeal was conducted.

The Law

Direct discrimination

112. Section 13(1) Equality Act 2010 provides:

“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.”

113. Section 23 provides that a comparator must be in circumstances that are not materially different from those of the claimant. A comparator may be real or hypothetical.
114. Whether treatment is less favourable is determined objectively. It is not enough that the claimant considers it to be less favourable (**Land Registry v Grant** [2011] ICR 1390).
115. Demonstrating a difference in treatment is not sufficient. There must be 'something more' from which the Tribunal could conclude that the reason for the less favourable treatment was discriminatory in order to shift the burden of proof to the respondent (**Chief Constable of West Yorkshire Police v Khan** [2001] ICR 1065, HL; **Madarassy v Nomura International Plc** [2007] ICR 867).
116. When considering whether treatment is 'because of' the protected characteristic, the protected characteristic does not have to be the only reason for the treatment in question provided that it was a significant influence (**Nagarajan v London Regional Transport** [1999] ICR 877). This must be an influence which is more than trivial (**Wong v Igen Ltd** [2005] ICR 931).

117. In **R v The Governing Body of JFS and the Admissions Appeal Panel** [2010] UKSC 15, it was discussed that there are some cases in which it is self-evident that discrimination is taking place because the act of alleged discrimination includes, directly or indirectly, reference to a protected characteristic (for example, in **James v Eastleigh Borough Council** [1990] 2 AC 751 a policy of giving free entry to a swimming pool for those of pensionable age plainly discriminated against men who reached pensionable age at 65, compared to women who reached it at age 60). In such cases it is not necessary to examine the motives of the alleged discriminator at all. Where discrimination is not obvious, it may be necessary to examine the mental processes of the alleged discriminator to determine whether or not treatment is being afforded because of the relevant protected characteristic. The Tribunal must determine the facts that operated on the mind of the discriminator, not his motive for discriminating.
118. Respondent's counsel gave a slightly different emphasis to the treatment of motivation in his written submissions, however we agree with the conclusion he reached that it follows from this decision that a good motive does not amount to a defence to a claim of direct discrimination. Discrimination may be conscious or unconscious.

Associative direct discrimination

119. Section 13 requires that the less favourable treatment has to be 'because of' a protected characteristic. It is not required that it this has to be a protected characteristic of the claimant. For example, the Employment Appeal Tribunal in **Saini v All Saints Haque Centre** [2009] IRLR 74 upheld a complaint of discrimination where the claimant was subject to harassment because of the faith of his colleague; both were Hindu. It was held that if an employee establishes that he has been subjected to less favourable conduct because of his employer pursuing a discriminatory policy against the religious beliefs held by another employee that would be enough to establish discrimination.

Victimisation

120. Section 27 Equality Act 2010 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.”

121. There is a detriment if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment. An unjustified sense of grievance does not suffice (**Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337).

122. When considering whether treatment is ‘because’ the claimant has done a protected act or it is believed the claimant has done, or may do a protected act, the same principles of causation apply as to direct discrimination. It must however be established that the alleged discriminator knew or suspected that the claimant had done or would do the protected act, or there could be no causal link to the less favourable treatment (**Scott v London Borough of Hillingdon** [2001] EWCA Civ 2005, CA).

123. When determining whether a claimant has acted in bad faith, the primary question is whether they have acted honestly in giving the evidence or information or in making the allegation. The issue is not the employee’s purpose, but their belief. The Tribunal will already have established that the evidence, information or allegation was false, though this may be a relevant consideration (the more obviously false the allegation, the more a Tribunal may be inclined to find that it was made without honest belief). Motivation could also be part of the relevant context, for example that a employee dishonestly made a false allegation or were wilfully reckless as to whether an allegation was true because they had some collateral purpose, however the primary focus remained on the question of their honesty (**Saad v Southampton University Hospitals NHS Trust** [2019] ICR 311).

Time limits

124. For the reasons set out below we did not need to consider the legislation or authorities provided by the respondent in relation to time limits.

Conclusions

Direct discrimination

125. The first question for the Tribunal is whether the treatment alleged to be less favourable occurred.

126. The first matter relied upon is that Mr Daley refused to allow the claimant to use the printer in 2021. Even on the claimant’s own case this is not true, because she now accepts that he did permit her to use it. In any event we have preferred Mr Daley’s evidence as to this incident and find

there was no refusal at all for her to use the printer. In the circumstances the incident relied upon is not made out and we do not need to consider whether there was any less favourable treatment in relation to this incident because of race, sex or the religion or belief of the student whom the claimant alleges was with her. Nor do we need to consider whether the complaint in relation to this incident was brought in time.

127. The second matter relied upon is that Mr Daley refused to allow the claimant to use the printer on 5 May 2022. It is not in dispute that he refused to let the claimant use the reprographics room printers.

128. We ask then whether this was less favourable treatment. The comparator relied upon by the claimant is a hypothetical male, not of Pakistani-British origin. We find that there is no evidence from which we could conclude that this is the case. The respondent had a clear policy in relation to use of the reprographics room due to the confidential nature of documents being reproduced in it and the high volume printing it was set up to deal with. There is no evidence to suggest that Mr Daley would have permitted any other member of staff without formal authorisation to use the room given its purpose and the clear policy.

129. In so far as the claimant may have implied in her questions in cross examination that Mr Lavery was an appropriate comparator, we find that he is not. He was only in attendance to collect printing paper, not to seek to use the reprographics room printers. He was not therefore in the same circumstances as the claimant.

130. Further we have no doubt that the reasons why Mr Daley refused the claimant's request were entirely to do with the respondent's policy and nothing to do with the claimant's race or sex. We are mindful that discrimination may be unconscious, however we found Mr Daley to be a straight forward, honest and credible witness and his explanation for what occurred was reasonable and compelling.

131. In the circumstances the claimant has not demonstrated that there is any evidence from which we could conclude that the refusal to let her use the printer on this occasion was less favourable treatment because of race or sex. The burden of proof does not pass to the respondent but nevertheless we are satisfied with the respondent's clear explanation of the refusal.

132. The direct discrimination complaints therefore fails.

Victimisation

133. The first question for the Tribunal is whether there are matters which could, leaving aside section 27(3), amount to protected acts within the meaning of section 27(2).

134. The first matter relied upon by the claimant is her grievance email dated 5 May 2022. In this email the claimant suggests that Mr Daley *'is racist or has an issue with women. His behaviour is not acceptable at all'*. This is sufficient to amount to an allegation that another person had contravened the Equality Act 2010, and therefore falls within the ambit of section 27(2)(d) subject to the exclusion in section 27(3).
135. The claim 22 August 2022 brought proceedings under the Equality Act 2010 and therefore complied with the requirement in section 27(2)(a), subject to the exclusion in section 27(3).
136. The question then arises whether the claimant made false allegations in her grievance and/or her Tribunal claim and did so in bad faith.
137. The attachment to the claim form in this matter adopts almost identical wording to the grievance email of 5 May 2022 (noting the date given for the May incident is incorrect). The claimant alleges that Mr Daley was incredibly rude and dismissive, then sets out two paragraphs dealing briefly with the incidents in October 2021 and on 5 May 2022. The grievance alleges that Mr Daley was racist or had an issue with women, whereas the attachment to the claim form refers to experiencing racism/discrimination and the claim form itself ticks boxes for both race and sex discrimination.
138. The first question is whether either document contains false allegations. We have found that the October 2021 incident did not occur in the way described in either document. This allegation is therefore false. In relation to the 5 May 2022 incident, we have found that the brief description in numbered paragraph 2 of the email was in fact broadly accurate, however this is caveated by the claimant's assertion at the head of the email that Mr Daley was incredibly rude and dismissive which we have found was not true. Taken as a whole therefore, and leaving aside the claimant's subjective view that she had been subjected to discrimination, the allegations made in this email, which are repeated almost verbatim in the attachment to the claim form, are on balance false.
139. Applying the guidance in **Saad**, we go on to consider whether the claimant act dishonestly in bringing her grievance or her Tribunal claim. While the extent of the falsehood and the purpose in making the allegations are relevant, our focus must be on whether the claimant was honest or not.
140. The respondent submits that the claimant's motivation for bringing the claim and her conduct generally is that she does not like not getting what she wants, has no regard for rules and instruction if it does not align with what she wants, and has a propensity to make serious allegations. The claimant's submission is that her grievance was raised with good intention, and to suggest otherwise is an attack on her character and values.
141. In determining whether the claimant was honest or not in bringing her grievance and subsequent claim we have had regard to the totality of the evidence before us.

142. We considered the extent of the falsehood in the documents. We find that the claimant must have known that she was falsely reporting the incident in October 2021. Even on her own account in these proceedings the claimant accepts that Mr Daley did not refuse to permit her to use the printer. Given that she had no access herself, he must have actively assisted her and she would have known this. It is notable that she did not raise a complaint that this incident was discriminatory in any way at the time. We find that this minor interaction has been included only to bolster the claimant's complaint about Mr Daley's conduct on 5 May 2022.
143. What was said in the grievance about the incident of 5 May 2022 is broadly accurate, save that the claimant must have known that Mr Daley was not *'incredibly rude or dismissive'*. However, the way the claimant went on to describe the incident in the grievance meeting with Mr Clarke, namely that Mr Daley did not give her a reason why she could not access the reprographics room, was false. We have found he did provide a reason, as confirmed by Mr Lavery. The claimant at this point had elaborated her account, which would give a stronger impression that Mr Daley had been rude to her. By the time she presented her claim form, although this contains the same brief account, the claimant would have known that she was presenting a claim which would rely on a false version of events. This is supported by the even more elaborate version the claimant gives in her witness statement, that Mr Daley simply said 'No' to her and repeated his refusal after the claimant asked for clarification, which is not consistent with any of her earlier versions and we have found is not true.
144. We have considered whether the respondent is correct as to the claimant's motivation in making these allegations. We find that the claimant has been willing to elaborate and make false serious allegations to improve her case. This includes, for example:
- (i) the new version of events on 5 May 2022 in her witness statement;
 - (ii) Her baseless allegation that Mr Lavery was friends with Mr Daley, implying their account was fabricated;
 - (iii) Her baseless and somewhat bizarre allegation that very senior management colluded to fix the staff awards as a systemic cover up;
 - (iv) Her allegation that in October 2021 she was accompanied by a student wearing a headscarf, which we have found was not true and which was not mentioned at all until well into these proceedings.
145. We ask ourselves why the claimant would do this. We find the most likely explanation is that she was angered by Mr Daley's refusal to do what she wanted, and wanted the respondent to take some form of punitive action against him. This included moving him from the reprographics room (which could obviously not be moved itself) which was his primary responsibility, so that she did not have to interact with him at all.

146. Taking all this together, we find that the way in which the allegations against Mr Daley and then against the respondent have been elaborated upon and escalated with time is demonstrative that the claimant has not accepted the respondent's conclusions in relation to the grievance and lack of action against Mr Daley, and that the claim is designed to punish both Mr Daley and the respondent as suggested by the respondent. There is no other reasonable explanation for the claimant putting forward matters we find she must have known were false, and adding additional or different false detail with time in an effort to bolster her allegations, and the claimant has provided no good explanation for the inconsistencies in her accounts. Rather during cross examination she attempted to change her version of events again (for example by suggesting Mr Daley blocked the door with his foot, rather than opening it halfway) to attempt to deal with problems with her account raised by the respondent.
147. Answering the question posed by **Saad**, we find that, in deliberately including allegations that she knew to be false in her grievance and claim, motivated as we find she was to punish Mr Daley and by the time of the claim the respondent, the claimant was on an objective view and by ordinary standards dishonest.
148. Therefore her conduct in bringing both the grievance and the claim was in bad faith and falls into the exception in section 27(3).
149. The claim for victimisation must therefore fail.
150. If are wrong about that, then in any event we are satisfied that there is no evidence from which the Tribunal could conclude that any of the matters relied upon by the claimant as detriments were because she had raised a grievance which included a complaint of discrimination or presented a claim that included complaints of discrimination.
151. Taking the allegation of a failure to investigate the grievance properly, we find that the grievance was investigated properly by Mr Clarke, in that he sought accounts from the claimant, from Mr Daley and from the independent witness Mr Lavery. There may have been procedural failings in the way Mr Clarke dealt with the matter, namely that he did not ensure that the claimant was provided with a written outcome at the time he reached his conclusions. However there is nothing to suggest that his reason for not providing a written outcome was because the claimant had made a complaint of discrimination. This appears to have been an oversight which may have been caused by a lack of HR support as suggested in evidence by Ms El Atrash. There is nothing more the claimant has pointed to which shifts the burden of proof to the respondent.
152. Similarly there is nothing to suggest that the way in which the grievance appeal was dealt with was because of the fact the complaint was a discrimination complaint. We find that the explanation provided for the timing of the appeal hearing after the end of term was entirely reasonable

given the request the claimant had made for a specific panel composition. The only matter which we find might have been done differently was to postpone the appeal hearing to a date in the new term which the claimant and her union representative could attend in person. However we understand the respondent's reluctance to leave the matter that long given the seriousness of the allegations made. This was because of the potential impact on the individuals concerned, not because a complaint of discrimination had been made in itself. There was in any event no detriment to the claimant as she was able to provide full submissions in writing which were fully considered.

153. As to the dismissal, we find there was no connection to the grievance whatsoever. It is plain from Mr Casey's one to one records, which we have found to be an accurate reflection of matters discussed, that multiple complaints had been raised against the claimant by both students and staff and discussed with the claimant throughout her employment. Her class attendance levels had also been discussed. By the time Mr Casey was considering the probation review the grievance had already been concluded, including the appeal. It was on the advice of HR that he delayed the probation review for that reason. There is no evidence at all that Mr Casey would be motivated to dismiss the claimant by the fact that she had raised a discrimination complaint. The complaint was not about him, and it had been fully concluded by the time he made his decision. Moreover he could not have known about the claim at the time the decision was made given the date of notification of the claim and our findings as to when it was in fact brought to the respondent's attention. The decision to dismiss was plainly based on the claimant's own conduct as regards staff and students, was well reasoned, and, while we need not make any findings as to whether the complaints made against the claimant were well founded, the fact that multiple complaints were made has been well evidenced during the course of these proceedings.

154. The claim for victimisation therefore fails.

Consequential matters

155. The claimant has enquired when she might make a preparation time order. Either party is entitled to make an application for costs or for a preparation time order as appropriate within **28 days** of the date this judgment is sent to the parties. The parties' attention is drawn to the circumstances in which such orders may be made as set out in rule 74 of the Employment Tribunal Procedure Rules 2024.

Employment Judge Keogh

Date 6 February 2025

JUDGMENT & REASONS SENT TO THE PARTIES ON

12 February 2025