EMPLOYMENT TRIBUNALS

Claimant: YR

Respondent: ZU

Heard at: Southampton On: 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, 27 (in chambers), 28 and 29 November 2024.

Before: Employment Judge Dawson

Appearances
For the claimant: Representing herself
For the respondent: Ms Palmer, counsel

ANONYMISED JUDGMENT

The claimant's claims are dismissed.

REASONS

Introduction and issues

1. By claim forms presented on 1 June 2022 and 24 November 2022 the claimant presented claims of race discrimination, disability discrimination, discrimination on the grounds of sex and unfair dismissal. At a hearing before Employment Judge Gray on 10 January 2024 the issues were agreed in the form of a list which was presented to the tribunal.

2. On the first day of the hearing the claimant sought permission to amend the list of issues which I refused. I gave separate reasons for that decision and do not repeat them in this judgment.

3. The issues, therefore, are those set out in the list which appears at page 262 of the bundle of documents. and are set out in the Appendix these reasons.

Preliminary Matters relating to the Conduct of the Hearing

4. The hearing was listed to last for 15 days. Shortly before the hearing the Regional Employment Judge directed that the case would be heard by a judge sitting without members and that the tribunal would not be able to sit on 14th and 15 November 2024.

5. Prior to the hearing Employment Judge Rayner had directed that the tribunal would try to provide, for the claimant's use, an ergonomic chair and that DD could give evidence by way of video if necessary. A chair was provided for the claimant's use which she confirmed was satisfactory. In the event DD gave evidence in person.

6. The first two days of the hearing were set aside for reading and preliminary matters. On the first morning of the two days, the parties attended the hearing by video in order to discuss preliminary matters. At that stage I indicated that I may be able to start hearing evidence on Tuesday, 12 November 2024, in order to make up some of the time which would be lost on 14th and 15 November 2024. The claimant resisted that suggestion because she said that she had not wanted to read the bundle until it was finally sorted (she made reference to communications going back and forth between her and the respondent), and she would not, therefore, have read the bundle. In those circumstances I agreed that the hearing of evidence would not start until 13 November 2024.

7. Although the claimant indicated that she had not read the bundle, she agreed that she had been sent a copy of it and was not asking for an adjournment of the hearing. The respondent indicated that, in fact, it had been working with the claimant to finalise the bundle and pointed to a specific section in the bundle (section 5) headed "Additional Documents and Correspondence". The respondent's counsel indicated those were documents which the claimant had latterly sought to include in the bundle. Nevertheless, the claimant was concerned that not all the documents she wanted to be in the bundle would be present. I explained to the claimant (and reiterated the point during the hearing on 13 November 2024 and on occasions thereafter) that if she had any particular documents that she wanted the tribunal to look at, she could send (or bring) them to the tribunal and to the respondent and ask the tribunal to look at them. Although the tribunal would need to make a ruling on whether it would consider those documents, the claimant was at liberty to ask the tribunal to look at any

additional documents she wanted to. It was also explained to the claimant (in answer to her question) that if there were documents which she believed had not been disclosed by the respondent, she could ask me for an order that the respondent disclose particular documents. Again, a ruling would have to be made in the light of any representations made by the respondent but the claimant was at liberty to ask for such an order.

8. During the course of the hearing, the claimant sought to rely upon a limited number of additional pages and they were all admitted into evidence. The respondent also sought to add a small number of documents to the bundle and those documents combined made up pages 1261 – 1290 of the bundle.

9. The claimant's witness statement did not contain any page numbers. In those circumstances I invited the claimant to send a list of documents to the tribunal which she wanted me to read. That could simply be a list of page numbers, it did not need to be incorporated into the claimant witness statement. Again, I reiterated that invitation to the claimant during the hearing but she did not submit a list.

10. In the preliminary hearing, as set out above, I ruled that the list of issues could not be widened. The claimant expressed unhappiness at that decision. When the hearing resumed on 13 November 2024, the claimant told me that she had been so upset by my ruling that she had not been able to read any documents and she had not felt well. I asked her what application she was making (if any) and she said that she was asking me to take account of the fact that she might not be as good at presenting her case as she otherwise would have been. I was happy to do so and again I reiterated that she could ask for a break at any time and clarification of any matters that she wanted to. The claimant did not ask for an adjournment. There was a break in the claimant's evidence from 13 November 2024 to 18 November 2024 but thereafter, on several occasions during the hearing, the claimant indicated that she had not read the documents in the bundle, she made no application in that respect.

11. I asked the parties whether any other adjustments were needed for the conduct of the hearing, other than those referred to above. The claimant indicated that she might want to move around during the hearing and may need additional breaks. I told the claimant that she could move around, she could ask for a break at any time and if at any point she did not understand any part of the process or any question, that she should feel free to ask for guidance. An additional full set of bundles was made available for the claimant's use at the hearing, and she was permitted to remain in the tribunal room during breaks. On one occasion she asked a clerk to heat her scarf on the radiator for her, which the clerk did.

Rule 50 Order

12. Having reviewed the claimant's second Disability Impact Statement, I raised with the parties that in my view this was a case where consideration should be given to making a Rule 50 order. The application became somewhat complicated and is dealt with in a separate order.

Timetable

13. At the outset of the hearing, I explained to the parties that the timetable which had been set down by Employment Judge Gray would be adhered to and asked the claimant to provide me with a provisional list of how long she would be with each witness. The respondent invited the claimant to liaise with it so that discussions could take place as to the order in which the respondent would call its witnesses. The respondent indicated its intention to call the witnesses in the order of the witness statements and, in the event, did so.

14. As indicated, the tribunal lost two days through no fault of the parties but, having regard to the fact that the claimant was no longer calling the number of witnesses which she had anticipated I directed the respondent to finish cross-examination of the claimant within three days rather than 4.5. Ms Palmer agreed to that and accomplished it, despite having a late start on the third day due to the claimant's medical appointment. The claimant's evidence finished on 19 November 2024. I did not ask the claimant to cross examine the respondent's witness statements in less than 4.5 days, thus the intention was that the respondent's evidence would end by lunchtime on 26 November 2024.

15. In accordance with the Presidential Guidance on General Case Management and in particular Guidance Note 5: Timetabling, as I have said, I asked the claimant to provide me with a timetable of how long she wished to ask each witness questions for. She did so. The estimates fitted within the 4.5 days which had been allowed and I agreed that the claimant could have the time that she sought.

16. As I have also indicated, the claimant asked to start the hearing late on 19 November 2024 due to a medical appointment. I agreed to do so. At the request of the claimant, the tribunal finished at 3 pm on 20 November 2024 and at around 2 PM on 22 November 2024 because the claimant did not want to go into the weekend feeling distressed. Before I agreed to finish early on 22nd November, I checked with the claimant whether she would be able to complete cross examination of the respondent's witnesses within the remaining time and she assured me that she would. In fact, although the evidence was due to close by lunchtime on 26 November 2024, with submissions taking place in the afternoon, the respondent was not able to close its case until 3 pm because delays had meant that the claimant did not finish her cross examination until then. The claimant then submitted that

she had not understood the tribunal would be sitting on the 27 November and that she had made plans to move her mother from a care home where she felt her mother was being abused, therefore she would not be able to attend on 27 November. She asked for the tribunal not to sit on 27th. In order to keep the timetable on track it was agreed that I would hear the claimant's submissions on 26 November 2024 by sitting late, spend the 27 November 2024 considering my judgment and making provisional findings of fact, hear submissions from the respondent on the morning of 28 November 2024 and deliver judgment on 29 November 2024. All parties agreed to that course of action and it was met.

17. In addition to the above matters, the claimant was late for the tribunal on a number of occasions. On two occasions she told me it was because she had no money for parking, on one occasion she told me it was because she had got lost. On 22 November 2024, I explained to the claimant that if she continued to be late, the time would have to be taken out of the time available for cross-examination. Notwithstanding that, the claimant was still late on two further occasions. The claimant was, however, able to complete the cross-examination within the time she had anticipated for all witnesses except for GG and HH. They were the last two witnesses. In respect of GG, I granted the claimant a short extension of the time she had requested but it was still necessary for me to bring the cross-examination to a conclusion. I considered that it was in the interests of justice to do so because it was necessary to conclude the case within the time which had been allowed; to fail to do so would be disproportionate to the issues involved and also unfair to other tribunal users. Moreover, the claimant had spent a considerable amount of time in cross-examination of a number of witnesses dealing with matters which were not related to the issues, despite the occasional guidance of the tribunal. I explained to the claimant if she finished the cross-examination of HH earlier than she had anticipated, I would recall GG. Despite that, the claimant spent a considerable amount of time with HH exploring matters which were not relevant to the issues and only completed her cross-examination of HH after the time for cross examination had expired.

The claimant's behaviour in the tribunal

18. It was necessary on more than one occasion to address the claimant's behaviour. She repeatedly addressed the respondent's witnesses as they sat in the public area of the tribunal, sometimes in aggressive tones. She had to be told not stare at witnesses or point at them. The claimant was repeatedly offered breaks, including at the point when she started cross-examining GG by explaining that she was going to lose her temper with him. It was necessary to curtail that behaviour in order to ensure that the hearing was fair to the respondent's witnesses as well as to the claimant.

19. I recount those matters to explain that I have not taken account of them in reaching the conclusions in this judgment. The way that the claimant behaved in the tribunal is not evidence of the way she behaved when working for the respondent some years ago.

The Evidence

20. I was provided with a bundle running to 1260 pages, a cast list and chronology (both of which I treated as non-agreed) and a bundle of witness statements running to 178 pages. As I have said, additional pages were added to the bundle up to page 1290. Except where otherwise stated, reference to pages below is to the bundle.

21. The claimant gave evidence on her own behalf. For the respondent I heard from:

    a. AA, Assistant Vice Chancellor until May 2022 and then Pro-Vice Chancellor,

    b. BB, Director of [redacted] until 1 January 2022, thereafter Director of [redacted],

    c. CC, Director of Equalities and Staff Development until December 2021, then Director of Equalities, Conduct and Complaints until 3 January 2024, then Director of Equalities,

    d. DD, Director of Student Services until 1 August 2021, then Director of Student Support and Success,

    e. EE, Health and Safety and Business Continuity Manager,

    f. Prof FF, acting Vice-Chancellor 1 April 2021 to 1 January 2022; then Deputy Vice-Chancellor and Provost until she retired in July 2023,

    g. GG, Acting Deputy Vice Chancellor 1 April 2021 until September 2022; then Pro Vice-Chancellor,

    h. HH, Chief Operating Officer.

Approach to the Evidence

22. In Gestmin SGPS SA v Credit Suisse (UK) Ltd, Leggatt J gave the following helpful guidance:

> *Evidence Based On Recollection*
>
> [16] While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of the most important

> lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.
>
> [17] Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory)
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> …
>
> [22] In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. ... Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.

23. I have approached the evidence in that way, whilst bearing in mind that in an employment context it is likely there are less documents than there would be in a commercial case.

The Law- Direct Race and Disability Discrimination

Statutory Provisions

24. .The following are relevant sections from the Equality Act 2010.

> **13 Direct discrimination**

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

39 Employees and applicants

(1)….

(2) An employer (A) must not discriminate against an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

109 Liability of employers and principals

(1) Anything done by a person (A) in the course of A's employment must be treated as also done by the employer.

(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.

136 Burden of proof

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

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

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

The effect of section 39 Equality Act 2010

25. Section 13 of the Equality Act 2010 sets out the definition of direct discrimination, but it is section 39 which sets out the discrimination that gives rise to a remedy.

26. In this case the claimant says that she was not afforded opportunities to promotion (the redeployments), she was dismissed and she was subjected to detriments.

Causation

27. In considering questions of causation, in Nagarajan [1999] IRLR 572, the House of Lords held that that if the protected characteristic had a 'significant influence' on the outcome, discrimination would be made out. The crucial question in every case was, 'why the complainant received less favourable treatment … Was it on grounds of race? Or was it for some other reason, for instance, because the complainant was not so well qualified for the job?'

28. In Chief Constable of Greater Manchester v Bailey [2017] EWCA Civ 425 it was held at para 12: "Both sections use the term "because"/"because of". This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [2000] 1 AC 501, referred to as "the mental processes" of the putative discriminator (see at p. 511 A-B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, Nagarajan, at p. 513B."

The Burden of Proof and drawing of inferences

29. In Madarassy v Nomura International plc [2007] IRLR 246, the Court of Appeal held, at paragraphs 56-57,

> "The court in Igen v Wong expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. 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.
>
> 'Could conclude' in s.63A(2) must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the

statutory 'absence of an adequate explanation' at this stage (which I shall discuss later), the tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like as required by s.5(3) of the 1975 Act; and available evidence of the reasons for the differential treatment.

30. In Bahl v The Law Society [2004] IRLR 799,e the Court of Appeal held

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…

It has been suggested, not least by Mr de Mello in the present case, that Sedley LJ was there placing an important gloss on *Zafar* to the effect that it is open to a tribunal to infer discrimination from unreasonable treatment, at least if the alleged discriminator does not show by evidence that equally unreasonable treatment would have been applied to a white person or a man.

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In our judgment, the answer to this submission is that contained in the judgment of Elias J in the present case. It is correct, as Sedley LJ said, that racial or sex discrimination may be inferred if there is no explanation for unreasonable treatment. This is not an inference from unreasonable treatment itself but from the absence of any explanation for it. However, the final words in the passage which we have quoted from Anya are not to be construed in the manner that Mr de Mello submits. That would be inconsistent with *Zafar*. It is not the case that an alleged discriminator can only avoid an adverse inference by proving that he behaves equally unreasonably to everybody. As Elias J observed (paragraph 97):

'Were it so, the employer could never do so where the situation he was dealing with was a novel one, as in this case.'

Accordingly, proof of equally unreasonable treatment of all is merely one way of avoiding an inference of unlawful

discrimination. It is not the only way. He added (ibid):

> 'The inference may also be rebutted – and indeed this will, we suspect, be far more common – by the employer leading evidence of a genuine reason which is not discriminatory and which was the ground of his conduct. Employers will often have unjustified albeit genuine reasons for acting as they have. If these are accepted and show no discrimination, there is generally no basis for the inference of unlawful discrimination to be made. Even if they are not accepted, the tribunal's own findings of fact may identify an obvious reason for the treatment in issue, other than a discriminatory reason.'

We entirely agree with that impressive analysis. As we shall see, it resonates in this appeal

31. In Nagarajan Lord Nicholls pointed out "…"Many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. An employer may genuinely believe that the reason why he rejected an applicant had nothing to do with the applicant's race. After careful and thorough investigation of a claim members of an employment tribunal may decide that the proper inference to be drawn from the evidence is that, whether the employer realised it at the time or not, race was the reason why he B acted as he did. It goes without saying that in order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn"

Meaning of Detriment

32. In deciding whether the claimant was treated unfavourably I have had regard to the decision in Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11 that, in respect of the definition of detriment,

> "As May LJ put it in De Souza v Automobile Association [1986] ICR 514, 522 g, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work.
>
> But once this requirement is satisfied, the only other limitation that can be read into the word is that indicated by Brightman LJ. As he put it in Ministry of Defence v Jeremiah [1980] ICR 13, 30, one must take all the circumstances into account. This is a test of materiality. Is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment? An unjustified sense of grievance cannot amount to "detriment": Barclays Bank plc v Kapur (No 2) [1995] IRLR 87. But, contrary to the view that was expressed in Lord Chancellor v Coker [2001] ICR 507 on which the Court of Appeal relied, it is not

necessary to demonstrate some physical or economic consequence. (Paragraph 34 to 35).

The Law – Disability

33. Disability is defined in section 6 of the Equality Act 2010. A person has a disability if they have a physical or mental impairment and that impairment has a substantial and long term adverse effect on their ability to carry out day-to-day activities.

34. "Substantial" means more than minor or trivial (section 212 (1) Equality Act 2010)

35. In Aderemi v London and South Eastern Railway [2013] ICR 591, Langstaff P stated

> "It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other'. (paragraph 14)

36. The approach in determining whether a person has a disability is to consider:

- Whether the person has a physical or mental impairment;

- Whether the impairment affects the person's ability to carry out normal day-to-day activities;

- The effect on such activities must be 'substantial';

- The effects must be 'long term'.

Goodwin v The Patent Office [1999] ICR 302

The Law – Failure to make Reasonable Adjustments

37. The following provisions of the Equality Act 2010 are relevant

> **20 Duty to make adjustments**
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> (1) …
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> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
>
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.
>
> (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
>
> …
>
> (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
>
> (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
>
> (a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

…

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

38. In Environment Agency v Rowan [2008] IRLR 20, the EAT gave guidance on how an employment tribunal should act when considering a claim of failure to make reasonable adjustments. The tribunal must identify:

"(*a*) the provision, criterion or practice applied by or on behalf of an employer, or;

(*b*) the physical feature of premises occupied by the employer;

(*c*) the identity of non-disabled comparators (where appropriate); and

(*d*) the nature and extent of the substantial disadvantage suffered by the claimant'.'

39. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1).

40. In Royal Bank of Scotland v Ashton [2011] ICR 632 the EAT held:

> **15** The duty, given that disadvantage and the fact that it is substantial are both identified, is to take such steps as are reasonable to prevent the provision, criterion or practice (which will, of course, have been identified for this purpose) having the proscribed effect – that is the effect of creating that disadvantage when compared to those who are not disabled. It is not, therefore, a section which obliges an employer to take reasonable steps to assist a disabled person or to help the disabled person overcome the effects of their disability, except insofar as the terms to which we have referred permit it
>
> It went on
>
> **24** Thus, so far as reasonable adjustment is concerned, the focus of the tribunal is, and both advocates before us agree, an objective one. The focus is upon the practical result of the measures which can be taken. It is not—and it is an error—for the focus to be upon the process of reasoning by which a possible adjustment was considered. As the cases indicate, and as a careful reading of the statute would show, it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment. It is an adjustment which objectively is reasonable, not one for the making of which, or the failure to make which, the employer had (or did not have) good reasons.

The Law- Unfair Dismissal.

41. Section 98 Employment Rights Act 1996 provides that it is for the Respondent to show the reason for dismissal and that it is a potentially fair reason.

42. Section 98(4) states that "The determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)- depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and shall be determined in accordance with equity and the substantial merits of the case".

43. The irreparable breakdown of a relationship can amount to some other substantial reason, the tribunal must keep in mind the distinction between a dismissal for misconduct because a claimant has behaved in such a way as to bring about a breakdown in relationships and the different scenario where

the employer is simply faced with relationships which are irretrievably broken (Perkin v St George's Healthcare NHS Trust [2005] IRLR 934 and Ezsias v North Glamorgan NHS Trust [2011] IRLR 551).

Findings of Fact & Analysis

44. Given that the parties to this claim know and understand the factual background to it, in order to keep these Reasons within a manageable length, I will focus on the issues which it is necessary for me to resolve in order to decide whether the claimant's claims are valid or not. It is not possible, or appropriate, to recite all of the evidence which was heard over the course of a 13-day hearing, my notes alone run to 253 pages and over 36,000 words, the witness statements run to nearly 70,000 words. I have, therefore, focused on the evidence which it is necessary for me to resolve the disputes. Where evidence is not mentioned, it is not because I have overlooked it, but because I do not consider it necessary or appropriate to recite it, having regard to the need to keep this judgment of proportionate length.

The reliability of the witness evidence

45. In a number of respects, I found the claimant's recollection to be unreliable. Those respects are set out in more detail as I address individual issues, but I set out a selection of them at this stage as examples.

46. In relation to issue 3.1.10, the claimant said that after receiving mandatory training she felt like every single thing that she said was made into a kind of innuendo. She said that everyone was smirking at her and ridiculing her. She said that was particularly in respect of an email about a mandatory survey. She then said that she was being called all sorts of slutty names whilst walking around the campus and she had sent an email to someone in the respondent stating that she just wanted to check how something was intended and requesting a meeting to sort it out.

47. It was put to her by the respondent that it would be submitting that was a figment of her imagination unless she could provide the emails. On the final day of evidence, the tribunal was presented with page 1287 of the bundle which is the email which the claimant says was about the mandatory survey. The email, which is from the claimant says:

> I've completed the REC Panellist training now, so please feel free to get in touch with any queries relating to the assessment of a REC application. And I'm looking forward to receiving the mandatory staff survey in due course😊
>
> with best wishes
>
> YR.

48. When the claimant introduced that email she modified her position in relation to it saying that she was writing sarcastically, although she then went on to say that everyone was saying “mandatory, mandatory” (and said it in a voice which one might use if saying something in a suggestive manner).

49. The claimant also identified the email where she said that she had tried to check what was intended as being the one at page 786. That says:

> Hi both,
>
> As you are aware, BUN is looking for a Chair for 2021/22. Our focus for the year ahead is well-being, and I think that [redacted] will be an excellent Chair to lead this agenda, with her experience in establishing the Breaking Through Group. I am just awaiting confirmation from [redacted] that Student Services can subsidise her time commitment. I have mentioned REAG to her.
>
> BUNs focus last year was strategy, policy and procedure. As I have previously mentioned, a number of actions in this area are still open in BUNs action log. Thank you AA for agreeing for REAG to assume responsibility for these.
>
> I am contacting you both today to request a meeting. At the last REAG that I attended before I resigned my seat, an action from BUNs log which I had requested for the agenda was presented by [CC] and the issue was not presented/understood as I had intended. I feel it is vital that I talk you through the action log so that meanings are clear and so that [redacted] can look ahead to the well-being agenda. When we meet, I would also like to be more explicit with you about my reasons for leaving REAG. In trying to maintain a light tone, I have not been open with you about some issues with REAG that I have experienced, and I would like to share my experience with you to provide a perspective. I trust a conversation will be helpful.
>
> Can we arrange a meeting please?
>
> With best wishes,
>
> YR

50. Neither email really supports what the claimant was saying in her evidence. In particular, it is difficult to see how the claimant could have sent the email at page 786 in order to check how something had been intended. I find that the claimant’s recollection about those events has changed over time.

51. In cross-examination of GG the claimant put that an email at page 385 was her being “sarcastic and grovelling”. In the email the claimant says:

> Thank you both for meeting with me today. Whilst I found the conversation very hard and overwhelming at times, I really do appreciate that you were willing to step forward to be SMT's representatives and have the conversation with me.
>
> A couple of outcomes are not recorded as I thought. I hope that I've clarified below.
>
> With best wishes

52. I do not accept that the claimant was being sarcastic and grovelling in that letter, read in the context of the email chain, the claimant was simply clarifying a note of a meeting. However, in order for her now to present the case which she wishes to, she cannot accept that the email can be read at face value and has to assert that it means something different to how it would have been read. Not only do I find that an objective reading of the email does not support the claimant's contention, I do not accept that the claimant ever intended it to be sarcastic and groveling. I do not find that she was lying about the email but it seems to me that the passage of time, combined with the claimant's evident distress at the way her employment ended, may well have caused her recollection to change.

53. When the claimant was cross-examining AA about the testing of the AI system she put to him that testing did not take place at the scale needed. She said that testing on five people was not sufficient. AA replied that he did not agree that testing was on five people at which point the claimant stated that she had just plucked the number five out of the air. Whilst, of course, it is commendable that the claimant clarified her position, it seemed to me that reflected the approach of the claimant to presenting her claim. The claimant was more concerned to convey the point that she wanted to than she was about the precise accuracy of the points that she was making.

54. In a similar vein, in respect of issue 3.1.12, the claimant alleged in her witness statement that milestones set by white project board members were met (see paragraph 74). However, when I asked her to put to BB which milestones had been set by which white board members, the claimant was unable to do so.

55. Finally, in this respect, the claimant put to CC that she (CC) had repeatedly emailed the claimant accusing her of victimising her by asking for a Dignity at Work respect. The only emails which exist in this respect are two, dated 26 October and 2 November 2021 (pages 470 and 484). Neither, in fact, accused the claimant of victimising CC, but more importantly the two emails read together cannot be understood as "repeatedly emailing" the claimant within the normal understanding of the words; this is an example of where the scale of things has increased as time has gone on in the claimant's recollection.

56. As I have said there are other examples of inconsistency which I have set out below in respect of particular issues. None of those things mean that I reject all of the claimant's evidence outright, however they do emphasise the importance of considering the contemporaneous evidence.

57. By contrast, the evidence of the respondent's witnesses tended to be more measured and referred to the contemporaneous documents. Nevertheless, again I consider that my primary focus should be on the contemporaneous documents and what they show, rather than the oral evidence of those witnesses wherever possible.

General Findings

58. The claimant was employed by the respondent from 2012. It is not in dispute that she joined Student Support and Success in 2019 from a role within Communications & External Relations. The claimant was appointed as Head of Student Satisfaction and Administration and DD became her line manager on 31 December 2018.

59. Towards the end of 2020, AA decided to create a Student Hub, with the intention to improve the student experience by simplifying pathways to information. The idea at that stage was to have a physical space where students could come with their enquiries but there would also be an online space. The claimant said in her evidence, and it was not disputed, that part of the problem which the Hub was to address was that there were areas of the building which students with physical disabilities could not access. I accept that evidence.

60. The respondent, therefore, advertised for a Project Manager to run a project which would investigate the options for the creation of an integrated One Stop Shop/Student Enquiries Hub. The project manager role was to identify potential options for an integrated enquiries Hub and, subsequently, provide project management in the project (page 307). The project manager role description makes clear that the plan was to enhance student experience. It was not, I find, at that stage, intended that there would be a one-stop shop for all those who might find it useful, such as staff and members of the public.

61. The Project Manager role required scoping of project outcome options and requirements, budgetary and staff considerations, liaising with stakeholders across the universities, the presentation of options by the end of January 2021 and scoping, prioritising and planning the agreed project by mid-March 2021. The project was to be delivered by September 2021.

62. The project manager role was a fixed term contract until the end of August 2021 on a full-time basis. The claimant applied for and was appointed to that role. There is no dispute that once the claimant was appointed to the role, the contract was extended until February 2022 when it came to an end

and the claimant returned to her substantive role. Thus, I find, there was delay to the project.

63. Many of the complaints which form the basis of this claim arise out of the claimant's role as Project Manager.

64. On 21 December 2020, AA wrote to a number of people, including MM and BB, inviting them to be part of the "Project Board for an exciting new project to create a physical 'one-stop-shop' for students covering a range of services. The Project Board will help steer and shape this project which SMT is keen to progress rapidly for the beginning of the 2021 Academic Year" (page 356).

65. I find that both MM and BB joined the project board and, BB very quickly became engaged in delivering her views as to how the project could best be scoped and delivered. Her involvement was, I find, undoubtedly the initial source of the tension between the claimant and BB, which then escalated.

66. At the foot of AA's email he included a description of the project, including the following:

> A project has been kick-started to develop the concept of a one-stop-shop further. The one-stop-shop proof of concept was piloted at ZU for incoming students during Welcome Week 2020, with advice teams from across the University co-located. The pilot was well received by both students and staff and the project is now being scoped more fully, taking a Lean approach to deliver value to students.
>
> The Student Hub will focus on creating an 'Apple Store Experience': strong customer service in an inspirational space with students' enquiries quickly and fully resolved there and then. It will bring together insights to continuously enhance the University's service offer: exceeding students' expectations and increasing their satisfaction with the University by delivering:
>
> • * Improved experience and better support for students
>
> • * Improved accessibility of services for students, in terms of location, times and convenience
>
> • * Process efficiencies in terms of staff time and de-duplication
>
> • * Competitive advantage in strengthening [redcated]'s reputation for student experience and wellbeing
>
> The proposal is for the Hub to be the student-facing space for all student enquiries including Student Services, Registry, Finance, LITS, Estates and Faculties.

> The project will require investment in the creation of both a physical space and online space,

67. A description of the Project Team was given as:

> A cross-departmental Project Team will be established to support the project, made up of representatives from the services housed within the Hub. Lean practitioners with an understanding of customer value would be advantageous to the project's success, to support process mapping.

68. The respondent has a Dignity at Work Policy. It appears at page 320 of the bundle. The summary of the policy is that it is a policy through which an employee can seek to address an issue which has impacted on their dignity at work (page 321). The details of how the policy operates are somewhat scant. The following principles can be ascertained from reading the policy:

    1. It is necessary to raise a complaint (paragraph 1.4) to activate it.

    2. On a proper reading of the policy, it is intended that the complaint is directed towards harassment or bullying (paragraph 2.1).

    3. The University appoints Dignity at Work Contacts who are people to whom employees who are subject to harassment, bullying or other behaviours that compromise their dignity can speak in confidence (paragraph 3.1).

    4. The complainant may raise the problem directly with the person alleged to have infringed their dignity, or in writing.(Paragraph 6.1)

    5. To have a dignity at work conversation an employee should inform a Dignity at Work Contact that they would like to have such a conversation, that Contact will then contact the individual about whom a complaint is made and arrange a mutually convenient time for a meeting between the complainant and the individual either with or without a Contact (paragraph 7).

    6. Records should be kept on the employee's personnel file (paragraph 9.2).

69. It is not stated in the policy, but in evidence it was not in dispute that a person against whom a Dignity at Work complaint was raised was not required to take part in a Dignity at Work conversation.

70. It is relevant to note that 6.1 of the policy states "All members of the University community are entitled to work and study in an environment where their dignity at work is respected. Any complaint of infringement of dignity at work will be taken very seriously." I find, therefore, that a person against whom a Dignity at Work complaint had been made would be likely to feel that a serious allegation had been made against them and is likely to

feel some anxiety about their future. At the very least, it appears that notes arising from the conversation will be kept on their file.

71. I find this policy falls within a grey area between the ability of an individual to raise a grievance and the commonsense position of speaking to somebody if they have upset you. There appears to me to a sound argument that it is a policy which is likely to increase workplace tension rather than decrease it, it is likely to escalate issues rather than encourage people simply to resolve matters through informal discussions or even overlook offences on occasion. It is likely to cause significant concern to people who are complained against because of the vagueness of the policy. A person who is complained against is likely to be left with, at least, the following questions. What is the likely effect of a set of notes being put on their file? Will it affect their future career prospects? How would somebody looking at the file in the future know whether to believe the complainant or the person complained against, since the policy does not involve any fact-finding? None of these matters are set out in the policy. In making those observations I bear in mind, of course, that it is crucially important that matters of harassment and bullying can be raised and addressed, but it remains unclear to me what this policy adds to the ability of an individual to raise a grievance (formal or informal) or speak to a colleague.

72. During the period when the claimant was project manager, the scope of the project changed and the claimant came into conflict with both BB and her line manager DD. She subsequently was also involved in a dispute with CC, amongst others. The way those problems arose and developed is best considered by addressing the particular issues in the case which I do below. Suffice it to say for now that the claimant raised a number of Dignity at Work conversations against colleagues and, ultimately, she was dismissed. The respondent says she was dismissed because of the workplace issues which arose from her behaviour, the claimant believes it was because of her race or sex or disability.

73. I now set out further findings of fact which are more specific to the issues but often they relate to more than one issue and should be read accordingly.

Issue 3.1.1- On 9 January 2021 did BB, Director of [redacted], seed doubt about the Claimant's project management ability to the senior sponsor of the Enquiries Hub Project on which the Claimant was project manager by providing the project sponsor with misinformation on a discussion that took place in a meeting arranged by the Claimant

74. The complaint relies on an email dated 9 January 2021 which appears at page 355 of the bundle.

75. It is apparent that from a very early-stage BB thought the Hub project needed significant amendment. On 9 January 2021 she sent an email to AA stating that she had had a chat with the claimant and realised that thinking

and planning had gone further than she originally thought. She wanted to raise a couple of "fundamental" thoughts.

76. It is necessary to set out some of the content of the email in a little detail in order to understand its purpose, but of course it is necessary to consider the whole email and its context and I have done so. The relevant parts for the purposes of this judgment are as follows:

> Don't get fixated on a *student* one stop shop – think one stop shop. All the services you have listed as in scope only Student Services have students as their only (or even primary) customer group. They all service enquiries and provide services for staff and even the wider community. From a systems and management point of view splitting how one customer group are manged actually ends up with duplication (or disengagement) from "back-office" parts of those areas. This is especially true if there is no additional staffing resource (let alone where these one stop shops are tied to staff savings!). No operational area can afford to duplicate systems. So we really need to be thinking that this "shop" will be how everyone accesses the "enquiry" services from these units. It can certainly be branded and communicated to different customer segments ….. but operationally it needs to be more fundamental. I did mentioned this as an issue to [YR] so hopefully she will also feed that back.
>
> The second one is around location and I have not discussed further.
>
> Here I have to make it really clear I am not making a flanking move on management or oversight of the service. BUT the location of the service I think needs to be considered. My understanding is that the plans have been to take [REDACTED] and convert it. Taking away one of the few large general classrooms we have left. I would like to make a counter offer. The one stop shop can be located within the Library spaces. The main "store" at [REDACTED] and a "metro" kind of version up in [REDACTED].
>
> …
>
> Please do take these suggestions in the sprit they are meant – I really am not trying to take over or elbow my way in I promise. And I certainly did not want to throw any live grenades into a Steering Group meeting without at the least giving you a heads-up.
>
> …

77. BB, as she explained in her witness statement and as is apparent from that email, thought it was a mistake to focus on student groups only and that she thought the one-stop shop should be accessed by all customer groups.

78. One can well understand the frustration which would have been experienced by the claimant (and possibly AA) at this email being sent. It seeks to take the project in a substantially different direction to that which the claimant had envisaged.

79. However, it is difficult to see how the email "seeds doubt" about the claimant's project management ability. BB's complaint is not about the claimant's abilities, it is about the project in the first place. When the claimant was asked how she was trying to say that doubt was being seeded, her answer was that there was no need for BB to have a conversation directly with AA because the claimant had already had a conversation with her and for BB to go to AA undermined the claimant's position in trying to lead a project focused on student satisfaction.

80. I find, and it is not in dispute, that there had been a discussion between BB and the claimant, as described by the claimant.

81. I do not, however, share the claimant's interpretation of what BB was doing. She was trying to sow doubt as to the viability of the project as envisaged. She did not want it to focus on student satisfaction, but on all customers and she did not want the physical site to be as proposed. She was, effectively, going over the claimant's head to speak to AA. In my judgment, she was not doing that because she had a lack of confidence in the claimant, but because it was AA who was responsible for the project and had invited her on to the Project Board. AA is white.

82. Whether BB was correct or not in what she was doing, is not for me to say but the email of 9 January 2021 was not an attack on the claimant or her abilities, if it is an attack on anyone it is an attack on AA. If it is seeding doubt about anyone's abilities, it is seeding doubt about his. However, I observe that these are emails between senior members of staff at the University. Those involved in leadership, whether within universities or otherwise, often need to be robust in presenting their viewpoints. Robust discussions are often invaluable in ensuring that money is not wasted and that projects are viable. It was in that spirit, I find, that AA received the email. There is nothing in the content or tone of the email which suggests it was anything other than a robust presentation of BB's view. I do not consider that a reasonable project manager in the position of the claimant would consider themselves to have been subjected to a detriment.

83. I am, moreover, entirely satisfied that whoever had been in the role of a project manager would have found themselves in the same position as the claimant did. If the project manager had been white, BB would have sent exactly the same email as the one that she sent. The fact of the claimant's race had nothing to do with BB's email.

Issue 3.1.2- On 4 February 2021 did BB shout down the Claimant in a project meeting attended by project board members?

84. The claimant's witness statement does not deal with this allegation at all. The minutes of the meeting which appear at page 530 show that the project was, for obvious reasons, at an early stage. Under item 2, they record "The aim of the group was to discuss what was deliverable. The team would need to get a tight handle on what we need to deliver and when."

85. It is apparent from the claimant's evidence that she believed a communications plan was needed at an early stage. She said, and I accept, that was a high level plan about how people will be engaged in the process and what the communication architecture would be to get the necessary bodies in the University to buy in to the project and get funding.

86. However, it is also apparent that BB had a strong conviction that it was necessary, before doing anything else, to establish what the scope of the project would be. From paragraph 3 of the minutes, it is clear that she was pursuing her concern that this should not be simply a student project but it should provide one entry point for all enquiries.

87. It is apparent from the evidence which I heard that the claimant is somebody who is willing to stand her ground and tell people if she thinks they are wrong. Some examples of that appear in relation to the issues below. I find that it is equally apparent that BB has a similar personality. An example is her email of 9 January 2021.

88. The dispute between the claimant and BB as to whether it was necessary to agree the communications plan first or the scope first carried over into the email correspondence about what the agenda would be for the next meeting (see pages 518 – 522, 523-525).

89. DD's witness statement states that whilst the discussion at the meeting was robust she does not have any recollection of BB shouting at the claimant and if there had been a verbal discussion she believes she would have remembered it.

90. Having observed BB give evidence and considered the contemporaneous documents written by her, I have no doubt that she could be blunt and direct. I find that she is the type of person who is very clear in her thinking and once she has reached a conclusion is unlikely to be swayed from it. However, I also find that she presents that position with firmness but without drama. I find that it is unlikely that she would shout someone down.

91. I do not accept the claimant's description of her in respect of this issue and I find that BB did not shout down the claimant. It is more likely that having been very upset as a result of not being able to keep the meeting focussed

on the communications plan, and blaming BB for that, the claimant's recollection is now inaccurate.

92. Thus, this allegation is not made out factually. The claimant was not subjected to a detriment.

93. Further, there is no evidence that somebody of a different race to the claimant would have been treated any differently. There is no evidence that any of the named comparators would have been treated differently, or that a hypothetical comparator in the same circumstances would have been. For the reasons I have given and go on to set out in more detail below, I am quite satisfied that BB would have behaved in the same way to anyone in the claimant's situation.

Issue 3.1.3 On 10 February 2021 did BB belittle the Claimant's position in a group email to project board members?

94. The email is at page 523, it is an email sent by BB to the claimant and DD with another person copied in. The email is as follows:

> Sorry YR but I thought I'd been clear,
>
> I am not in a position to offer any input to any, even high level, comms activities before we have an agreed and approved scope from SMT. I have been a PM long enough to know that plans have to flex for successful project delivery. And being driven by a project plan devised before the first Steering Group even met is not something I am prepared to accept.
>
> I would like the "one stop shop" to work but to do that we have to do it correctly. It is also not the only thing with huge time pressures pushing me and I need to be clinical with my time.
>
> So as I said in my previous email, I am happy to attend the portion of the meeting on the scope and will fully engage on that. But [DD] please accept my apologies for any element of the meeting on this comms plan piece.

95. The email shows an intransigence on the part of BB which would no doubt have been frustrating to the claimant as project manager. As was clear from the claimant's own evidence, she resented the fact that BB was removing the focus from this being about student satisfaction and from a physical building. Her strongly held view was that BB was not acting in the best interests of the project and students with physical disabilities because a physical space is what was needed. In her evidence she described BB as getting the project "veered onto an IT work stream".

96. It was apparent from the course of the hearing, although it is not entirely clear from the claimant's evidence, that the reason she says that this email

belittled her was because of the reference to "I have been a PM long enough to know that…". The claimant was the project manager on this project and sees BB as making a comparison between them which had the effect of belittling her.

97. The email is not one which, in my judgment, is belittling of the claimant but I would accept that a reasonable person in the role of project manager would consider the email to be somewhat to their detriment. The project manager is not being allowed to manage the project in the way they want, and the email has been copied to DD and another.

98. However, there is no evidence from which I could conclude that if the claimant was white (or the claimant had been any of the people listed in paragraph 3.4.1 of the list of issues) BB would have sent an email in any different terms. Indeed, I am confident that the email would have been exactly the same. That is evidenced by the email which was sent to AA and which I have referred above and by the view which I formed of BB. When she has formed her view, it seems to me that she sticks to it, regardless of the status of the person who she is talking to. I find that she is not concerned by either their seniority or any other characteristic.

Issue 3.1.4 On 10 February 2021 did BB refuse to attend the meeting requested by the Claimant if any of the agenda items raised by the Claimant were allowed?

99. To properly consider this issue one needs to return to issue 3.1.2. As I have set out above, the meeting of 4 February 2021 was left on the basis that there would be another meeting, which would be held on an emergency basis. BB appears to have been of the view that the only matter for discussion at the next meeting would be to discuss the scope of the project. That is apparent from her email of 10 February 2021 timed at 17:28. However the claimant had created an agenda which required significant discussion of the communications plan.

100. The claimant sent an agenda to DD on 9 February 2021 who replied at 17:53 stating that she had reworked the agenda and stating "we agreed this additional meeting was specifically to discuss the scope and plan as the board wasn't fully clear on what the scope was… We can't do the comms plan until we know the shape and scope…" (Page 520 – 521).

101. It is clear that the claimant was unhappy with that and there ensued an exchange of emails where the claimant advanced her point forcefully. Indeed, on 9 February 2021 at 21:34, the claimant wrote to DD stating, "to keep it on track, I need you, as co-chair, to assure members that there is no hurry for us to make a decision about the scope …." (Page 520). DD was the claimant's line manager. It is somewhat surprising to see such instructive language being used by the claimant to her line manager. It is an example of the way in which the claimant could be robust in advancing her views. However, it is also noteworthy that no one objected to the claimant

expressing her views in that way, which reinforces my conclusion set out above that there was an acceptance that emails between relatively senior members of staff would be robust.

102. In a subsequent email on 10 February 2021, again referring to the board members, the claimant wrote to DD stating "I trust that members will not derail the consultation discussion. Then we can move on to the discussion about the scope…" (Page 519).

103. Eventually DD acquiesced and wrote to the claimant stating, "let's run with this and see how the conversation goes" (page 519). However, when the agenda was circulated to the board members on 10 February 2021, BB replied to all recipients of the agenda to state "… I have to say I am a little confused about the agenda. My understanding about the meeting was to get a good grasp of the scope… (Page 524)" MM agreed with her and then the claimant entered into the email discussion.

104. There was then a further exchange between the claimant and BB until BB put her foot down with the email of 10 February 2021 which is the subject of the preceding issue. It is the last paragraph of that email which refers to sending apologies for any element of the meeting on the "comms plan piece" about which the claimant complains.

105. In her evidence BB gave some indication of the pressures which she was under with her general workload. That is evidenced by the points which she makes in her emails. Any discourtesy from BB is, in fact, to the chair of the meeting (DD) rather than the claimant. This issue is an example of where the claimant has assumed that her role has more importance than, in fact, it does (a point I return to below in respect of issue 3.1.7). It was for the chair of the meeting to decide what the agenda would be; although it may have been helpful for the claimant to have drafted an agenda, ultimately the decision was for DD as to what was discussed.

106. Again, and for the reasons I have given, I am entirely satisfied that this issue had nothing to do with the claimant's race and that a white project manager would have been treated in exactly the same way.

Issue 3.1.5- on 10 February 2021 did BB imply that her own project management experience exceeded that of the claimant deceit doubt on the claimant's abilities, and professional guidance, to project board members?

107. This is a repetition of the issues which arise out of the email at page 523, and I repeat my finding set out above. For the reasons I have given, I am satisfied that BB's behaviour was in no sense whatsoever to do with race.

Issue 3.1.6- On 27 April 2021 did CC table a paper at the Respondent's Race Equality Action Group which provided data on the Respondent's recruitment across ethnicity characteristics in which the Claimant could be

identified? The claimant alleges that the data showed one BAME application for senior management roles in that year which was her application

108. The precise paper which is in issue is not in the bundle. The meeting in question was minuted and the minutes appear at page 377 of the bundle. It was a meeting of the Race Equality Action Group (REAG)

109. It is accepted by CC that she may have shared a screen which showed a document with data on it. If so, the document would have been an earlier version of that which appears at page 397. The data which the claimant is concerned about appears at page 398 of the bundle and shows that one candidate of BAME origin applied for a SMT role. It also shows that there were 27 non-academic BAME staff at various grades within the respondent organisation, the most senior was grade G08. There were also 23 academic and research staff of BAME origin of whom 14 were at grade G08 and three at grade G09.

110. The claimant was asked how somebody who received the document at page 397 would be able to identify her. Her response was that it was bad practice not to aggregate the data when there were low numbers. However, when she was pressed on the question, she could only say that CC knew that the claimant was the applicant. I asked the claimant how I, as a stranger, coming to the documentation would be able to know that she was the applicant. She told me that I would be able to identify her if I had the same information as CC had about her. When I asked her what that information was, she told me that it was not something that she was allowed to talk about because of a settlement agreement. I indicated that if it was important for me to understand her case then I could hear submissions on whether I could be told what the relevant information was. At that point the claimant's position moved to being that she did not want to have to re-live those events in any event.

111. In answer to further cross-examination, the claimant said that if she went into the detail of how she could be identified the conversations that she had really appreciated that had improved race relations would be undone. She was therefore unwilling to give that further information. I regret that from the combination of the answers which the claimant gave, I can only conclude that the claimant was not able to point to any realistic way that she could be identified from the data which was shared.

112. I have considered, for myself, whether there is any way in which the claimant might be identified. Since she was applying for a SMT role I questioned whether it might be obvious that it was her who was applying since there was only one G08 member of non-academic staff who was from a BAME background, and it is unlikely that a more junior member of staff would apply for an SMT role. However, CC's evidence was that there was nothing to stop more junior members of staff applying for an SMT role and,

more importantly in my judgment, academic members of staff would also apply for SMT roles. Given the number of academic members of staff who were at grade G08 and G09, I can see no way in which the claimant could have been identified.

113. The claimant's witness statement says that she was deeply humiliated by CC's actions and she went out and cried and cried and cried. She decided that she needed to resign from the group as a consequence and that CC's disrespect of race equity was making her ill (paragraph 48).

114. That assertion is inconsistent with the email that the claimant sent on 28 April 2021 to AA, copied to CC. In it she stated, "I enjoyed REAG yesterday. The action plans that were shared were really interesting – thanks again… Finally, I've really enjoyed REAG this year. Thank you for inviting me and I hope that I've made some good contributions. Yesterday's meeting is my last meeting, though, as I need to reserve some energy for my doctorate – its taken a back seat this year, so I need to rationalise some of my interests. The actions plans look great, and I look forward to seeing them coming to life. [CC] – just let me know when you'd like to meet." (Page 790).

115. The claimant's recollection of events is further undermined by an email she sent to CC on 13 May 2021. She had sought to raise a Dignity at Work request and copied in the email address report@[redcated].ac.uk. CC had replied stating that that address was typically for student disciplinary reports and asking if she had intended to copy her in. The claimant replied stating:

> I contacted report@ for support when there was an issue with an intranet post, and was supported by you in the difficult conversation that followed.
>
> That is why I emailed report@ this time: because I would like to be supported by you in the difficult conversation that follows.

116. The dignity at work request was about the fact that the claimant wanted coaching and the respondent was questioning the costs of and she believed that was because of her race. It was directed at the senior management team.

117. If the claimant had been as upset as she now believes in April 2021, it is difficult to see why she would be asking for the support of CC in May 2021. I reject the claimant's explanation, which was that she thought the only person who could understand where the claimant was coming from with the Senior Management Team was the Director of Equalities. The claimant's witness statement says that she resigned from REAG because CC's disrespect of race equity was making her ill. If that was true it is highly unlikely that she would want CC to support her in a dignity at work referral which was about race discrimination.

118. I do not find this allegation is made out from a factual point of view. CC did not share data from which the claimant could be identified. The claimant may or may not be right that the respondent was not following best practice when it came to its method of presenting the data but that is not the issue. Further, I do not find that the claimant was upset about the content of the meeting at the time it took place.

Issue 3.1.7 – On 30 April 2021 did DD acknowledge that she had created a separate project workspace to the one the Claimant had already built and had set up a private discussion area for herself, BB **and II, Director of Communications and External Relations, on a project that the Claimant was the project manager?**

119. The claimant clarified that the allegation in this respect is not that DD acknowledged that she had created a separate project workspace but that she had actually created the same.

120. II was the Director of Communications and External Relations.

121. The claimant agrees with DD's evidence that the project board met on 21st February 2021 when it was agreed that there would be four workstreams within the project. The first was building the Artificial Intelligence functionality of the Ask function, labelled "ABC", the second was a development workstream around the requirements of the proposed physical hub, the third was a workstream on the development of a physical hub and the fourth was a workstream on service culture. Workstream 1 was the only stream to go live within the academic year and by September 2021.

122. The claimant also agrees that BB was the obvious choice for workstream 1 leader.

123. The issue, in this respect, is that DD says that the claimant had set up a Teams space for a Student Project Board which included students that she had recruited to input what they wanted. DD says that a few members of the project board had been included on that Teams space. However she says that it was necessary to have a Teams space where students were excluded so that documents such as tender documents and financial information could be shared. Thus BB, II and two others asked DD to create a separate Teams space for Workstream 1. She set the workspace up and emailed the claimant accordingly on 30 April 2021 (page 381). She says (and it was not challenged) that she gave the claimant owner permissions.

124. The claimant's position is that within the project Teams' space that she had set up different permissions could have been administered so that specific people could be invited to or blocked from various parts of the project. Thus, it was possible to share documents privately. Thus, what DD had done was unnecessary.

125. In response to DD's email, the claimant replied simply stating "Hello, So have I. With best wishes" (page 380). The tone of that email is unfortunate. Given that the claimant was writing to her line manager, it would be expected that the email would be somewhat more fulsome, explaining where the dedicated space was so that there was no room for misunderstanding. It is, I find, particularly surprising that the claimant had replied "all" to the email from DD and so AA also received that email. That was unnecessarily combative.

126. DD replied appropriately saying "Hi YR – I can't seem to see yours?" To which the claimant replied "that's okay – no worries. I think it would be good to have a chat though, so I can understand how this particular workstream would like to operate.". The claimant did not explain where her space was.

127. This exchange illustrates what I found to be an unspoken disagreement between the claimant and members of the project board as to the claimant's powers as Project Manager. From the evidence which the claimant has given, and her emails, I have concluded that the claimant felt that she was running the project and all those people who were on the project board were assisting her.

128. A particular example is in relation to issue 3.1.13, discussed below, where the claimant assumes that she has the authority to tell BB to shut down Workstream 1. Moreover, the claimant said in cross-examination that she felt the Project Manager should be in control of everything which was necessary to get the project in on time.

129. On the other hand, those on the project board appeared to view the claimant as somebody who was running the project on their behalf (or at least on behalf of AA).

130. The role description at page 307 of the bundle clearly states that the Project Manager reports to the Director of Student Services which was DD. It states that the Project Manager is required to carry out any duties reasonably required by the Director of Student Services. It also states that one of the main duties will be working with stakeholders to scope, prioritise and plan the agreed project and work with stakeholders across the University. In those circumstances, I have concluded that the claimant's understanding of her role was a misunderstanding. It may have been frustrating for the claimant to find that people such as BB were wanting to shape the project and that DD was willing to take on board comments from BB, but neither of them were wrong to do so.

131. A reasonable person in the position of the claimant would not feel that they were being subject to a detriment because DD had set up a different workspace within Teams. A reasonable employee in the position of the claimant would either have fed back to DD that the position was one of duplication *and explained why,* so as to work in collaboration, or simply

taken the view that the Director of Student Services was entitled to want a separate workspace and react accordingly. Either way, what happened was a normal incident of running a significant project. It was not reasonable for the claimant to feel aggrieved simply because the way that participants in the project communicated had changed at the behest of BB.

132. The matter did not, however, rest there. A meeting took place between DD and the claimant on 27th May 2021. Following that meeting DD wrote to BB and AA and II stating:

> I met with YR this morning, to consider a number of aspects of the enquiries hub project. She has asked that I approach to you request that workstream one moves out of the teams space set up for staff into the space set up as Student Project Board. YR's preference, as project manager, is to only have one teams space. This would have locked areas to ensure staff and student privacy. YR feels this would be easier administratively and would also facilitate easier collaboration. YR is very mindful how busy people are and does not wish to add any extra work unduly.
>
> WS1 is the only active workstream at present and therefore this would only impact upon your workstream; however, I am aware that there is already substantial activity underway in the teams space, with more to come imminently as the editorial content group is launched.
>
> (sic, 1234)

133. BB pushed back suggesting that a power struggle was at play and stating that she did not have time to redo all of the work, the workstream was well established in a project site but it was not the only thing that she was working on and stating that if she could not be trusted to be the workstream lead then she would need to remove herself from the group. That email was not sent to the claimant. (Page 1234).

134. On 4 June 2021 DD wrote a polite email to the claimant stating that there was too much work already underway in the staff project space to change matters now and BB and II did not have time to redo the work. She concluded “thanks as always for all the work you are putting into the project, YR. It’s so positive to see things starting to take shape.” (Page 541).

135. The refusal by the respondent to switch things back to the claimant’s preferred way of dealing with Teams was not an act which a reasonable Project Manager would see as being to their detriment. It would have been better for the claimant to have accepted the decision of DD when it was first made. It was always likely to be the case that if the Teams space had been used between 30 April 2021 and 27 May 2021, there would be resistance to moving things to a different space thereafter.

136. In any event, even if the claimant could reasonably consider those things to be to her detriment, it is necessary to consider whether they were because of the claimant's race.

137. The decision to set up the workspace in the way that it was is not unexplained. It was because DD and, I find, BB were unaware that the claimant had set up the permissions within the Project Board space which would allow the sharing of confidential documents. That belief would have been the same whatever the race of the project manager and, for the reasons which I have given above, I have no doubt that BB would have adopted the stance that she did regardless of the race of the project manager.

Issue 3.1.8 Between April and May 2021 did BB **exclude the Claimant from the tender process for the Enquiries Hub project workstream 1 (Artificial Intelligence) tool that BB was leading on by refusing the Claimant's request to be included in meetings and discussions and by participating in private groups on Teams and email chain?**

138. The tendering process referred to was for the provision of expertise in artificial intelligence. As I have indicated, workstream 1 was the creation of "ABC" so that questions could be dealt with online.

139. BB says that the claimant was not excluded because she had never asked to be part of the tendering process. BB was, of course, the Director of [redacted] and it is logical that she would be the person who would run the tender process. BB says that it was not something that she would have expected a project manager to get involved in.

140. BB says, and it was not disputed by the claimant, that the workstream 1 project group, together with a technical group from IT services would form the tender group.

141. The claimant disputes the assertion that she did not ask to be part of the tendering process and asserts that she did all the way along. When I asked her whether she put anything in writing, she said she would not because if she was challenging somebody she would speak to them personally.

142. It is difficult to fully accept that proposition. It was not necessary for the claimant to be challenging BB about being in the tender process, she could simply have said "I would like to be involved". It is apparent that the claimant was able to say what she wanted at other times in emails, such as in the exchange at page 520 of the bundle about the agenda and at page 380 about the Teams area.

143. There is no document in the bundle (as far as I have been able to tell) and the claimant has not referred to any document which would suggest that

the claimant had sought to be involved in the tender process at the time it was carried out.

144. There is also a subtle difference between how the claimant put her case in the list of issues and before me and how it was put in the grievance meeting. In the grievance meeting at page 511, it was recorded that the claimant was blocked from being involved with the tender, that she wanted to be involved as it would be good for staff development and she was told that people cannot be involved in the tender. In her evidence she said that she had spoken to DD and said she wanted to be involved but in the end she had to say that it would be a personal development opportunity. There is a difference between what was said in the grievance, namely that the claimant wanted to be involved because it would be good staff development and what she said to me which is that in order to get involved she had to say that it would be a personal development opportunity.

145. Given all of those matters I am not satisfied with the claimant did ask to be involved in the tender.

146. Nevertheless, I am willing to accept that a reasonable Project Manager in the position of the claimant might take the view that if she is not invited into the tendering process, that is to her detriment.

147. The question then is whether there is evidence from which I could conclude that she was not invited to take part in the tender process because of her race.

148. The claimant's argument is, in part, that I should draw that inference from the number of times which BB was unreasonable towards her.

149. BB says that even if the claimant had asked to be part of the tender process, she would not have expected the claimant to get involved in it because she was responsible for keeping the project as a whole on track (see her witness statement paragraph 27). I see no reason to doubt that evidence.

150. I cannot infer race discrimination in the way that the claimant seeks to persuade me to because I have not found that BB's treatment of the claimant was unreasonable. I accept that I could draw an inference that the claimant was being treated unfavourably on the grounds of race if she was subjected to unreasonable treatment which was unexplained (see *Bahl*), but that is not the case here. The failure to invite the claimant to take part in the tender process is explained by the combination of the fact that the claimant did not ask to be involved and the fact that BB would not have expected her to be in the tendering process.

151. In any event I accept the explanation of BB and that explanation is not in any way tainted by race discrimination.

Issue 3.1.9 - On 18 May 2021 did CC meet with the Claimant ahead of a Dignity at Work conversation scheduled with GG on 19 May 2021 and deliberately groom the Claimant on what to say and what not to say at the 19 May 2021 meeting?

152. In her evidence the claimant said that she had contacted CC and asked her to accompany her to a dignity at work meeting with GG. The email chain from pages 1246 – 1250 is the relevant chain.

153. The dignity at work conversation was raised because it had been agreed that the claimant would be given coaching. The coach that the claimant had wanted was more expensive than the University would normally pay, it had therefore raised that with the claimant. The claimant said that was because of her race.

154. The email chain shows, and I find, that the claimant had asked CC to support her in a dignity at work meeting and CC had replied to say that under the policy she did not think she would be able to do so as she was not a Dignity Contact. She did however say "I am available to discuss an equality issue with you if that's helpful and relevant." The claimant replied, "would you be available ahead of my DaW meeting next week please?" and CC agreed.

155. The claimant agrees with the witness statement of CC that they met to listen to what the claimant had to say, to allow her to practice and give her feedback. The claimant says that in their meeting she got "really really annoyed" and got "visibly upset" and that CC advised her that it would be helpful to focus on fewer things. The claimant says that CC that said to her it was not "not a good idea to say that" which was the grooming she complains of. The claimant says that she would rather have been told how to say things so the audience could hear them rather than be told not to say them.

156. The claimant was asked what she had said, that CC told her not to say. Her response was that it was because she was shouting, but she could not remember more. A little later she described herself as being furious and shouting in the meeting.

157. The word grooming is ambiguous. Often, nowadays, it is referred to as gaining trust or influence over a vulnerable person as preparation for exploitation. It can mean preparing or coaching a person for a role generally. It is unclear how the claimant uses the word but in essence her complaint is that although CC agreed to meet her to help her, because the claimant did not like the advice she was given, in some way she has been treated detrimentally.

158. I do not find that the claimant was treated detrimentally by the advice which CC gave. It may have been very good advice, particularly if the

claimant was getting visibly upset and shouting. It is often the case that focusing on a few central points is much more useful than using a more scattered approach.

159. Thus, I do not accept that there was any detriment to the claimant. However, even if there was, there is no evidence that CC would have given different advice to a person of a different race. The allegation overlooks the fact that CC gave up her own time to assist the claimant. She could simply have replied to say that she was not a Dignity Contact and left matters at that. The claimant's answer to that point, in cross-examination, was that because of CC's role as Director of Equalities, it was her function to assist the claimant. I do not accept that. It cannot be that simply because somebody is in that role, that they are obliged to coach everyone who is raising a Dignity at Work issue.

160. I find that the claimant was not groomed at this meeting, she was not subjected to any detriment and nothing which happened to her was because of her race.

Issue 3.1.10 At the same meeting on 18 May 2021 did CC imply sexual misconduct by the Claimant towards AA?

161. In her witness statement at paragraph 60 the claimant states that CC used the meeting as a stepping stone to imply sexual misconduct by the claimant towards AA to suppress the University's conversation on race.

162. In paragraph 61 of her statement, she says that towards the end of the conversation CC began talking about uncomfortable situations about people gossiping in the playground and new babies. Because AA had had a new baby, the claimant felt that CC was implying that the claimant had done something wrong and had no right to criticise others for doing wrong.

163. In cross-examination the claimant said that prior to the meeting, every time she said something somebody was smirking and ridiculing her, she was not being paranoid but everything she said was turned into some kind of sexual innuendo.

164. The claimant went further in her evidence and said that she was being called all sorts of slutty names while walking around the campus but she chose to ignore it.

165. CC denies saying the words alleged in that meeting.

166. Even if the claimant is right that CC had made reference to people gossiping in the playground and new babies, that would not be an allegation of sexual misconduct about the claimant and it is difficult to see why the claimant jumped to the conclusion that it was. There is no contemporaneous evidence that the claimant was being called slutty names, there was no

complaint from her at the time and there is no reference to it in the bundle. The claimant's further information at paragraph 45 (page 143) refers to the playground conversation but does not make any reference to a wider context and although the playground conversation is also referred to in the minutes of the meeting of 6 October 2022, page 1107, again the claimant did not make any reference to a wider context.

167. If, the claimant's evidence as set out in her witness statement is taken at face value, a reasonable person in the position of the claimant would not consider they had been treated to their detriment because someone had mentioned playground gossip and new babies.

168. It might be that within her further information the claimant is stating that the conversation was particularly triggering to her because she has experienced sexual trauma in the past. (See pages 143 – 144). Although that is not mentioned in the claimant's witness statement, I should still consider that possibility. However, the difficulty is that the claimant's own case, as advanced in cross-examination, was that she did not tell anyone about the PTSD arising from her sexual trauma (or, I infer, tell anyone about the trauma itself) apart from the respondent's staff counsellor. The claimant said that she would expect the staff counsellor to treat the information as confidential and, indeed, she asked for it to be deleted.

169. Thus, there is no basis on which I could find that CC would have been aware of the claimant's history. The allegation is that any such act of detriment was because of the claimant's race. If CC could not have known that she was subjecting the claimant to a detriment, because she did not know of the claimant's trauma, it is very difficult to see how it can be said that she was subjecting the claimant to a trauma because of the claimant's race.

170. There is no basis for me finding that even if CC made a reference to babies and playground gossip, she did so because of the claimant's race.

171. I find that the fact that the claimant has said, for the first time in evidence, that she was being called all sorts of slutty names whilst walking around campus is an example of where the claimant's recollection has shifted over time in the manner anticipated in *Gestmin.* Given those matters which the claimant did raise complaints about, it is highly unlikely that she would not have complained if she had been called such names.

172. In respect of this allegation, I do not find that the claimant was subjected to detriment and I find that if she was subjected to such a detriment, there is no evidence from which I could conclude that it was because of her race.

Issue 3.1.11 On 19 May 2021 during a dignity at work meeting with GG and CC did the Respondent choose to distract from the conversation about race

equality by deliberately overlaying an unexpected sexual misconduct implication towards the Claimant?

173. The claimant's evidence in this respect is that during the dignity at work meeting with GG, WW and CC the University chose to distract from the conversation by CC keeping repeating "remember we discussed new babies, gossip and uncomfortable conversations in the playground".

174. The claimant put to CC a slightly different version of events in cross-examination, namely that halfway through the meeting CC said to the claimant "do you remember saying "remember the conversation we had yesterday"". CC replied that she did not recall using any such words specifically but if she did, she did not have any special reason and was not alluding to anything to do with AA.

175. I asked CC about the specific words in the claimant's witness statement in connection with this meeting and she repeated that she could not recall specific words used by her in the meeting but if she had used those words it would not have been anything to do with AA and she could not think why she would have used those words.

176. GG denied that any such words were used (or at least he could not remember any such words being used).

177. The contemporaneous documents show that on 19 May 2021, GG wrote to the claimant (copying WW) stating "see attached, which put in writing what I verbally read out in the meeting and we agreed. Let me know if you feel the need for any amendments." (Page 385)

178. The claimant replied to both people stating "thank you both for meeting with me today. Whilst I found the conversation very hard and overwhelming at times. I really do appreciate that you are willing to step forward to be SMT's representatives and have the conversation with me. A couple of outcomes are not recorded as I thought. I hope that I've clarified below." She had then inserted some additional wording in blue.

179. The claimant has made no reference in her inserted comments to the alleged comments by CC and her statement of appreciation to GG and WW is inconsistent with how she now describes the meeting in her witness statement as containing a deliberate attempt to distract the conversation from matters of race discrimination. As I have said above, I reject the claimant's assertion that she was being sarcastic, in my judgment that is an explanation which the claimant now gives in order to avoid the obvious effect of the email.

180. I find that no words were used which caused the claimant the distress she alleges, there was no overlaying of an unexpected sexual misconduct implication towards the claimant.

Issue 3.1.12 By 23 August 2021 did BB fail to complete a project critical milestone(s) set by the Claimant?

181. The milestone alleged is the user acceptance testing milestone.

182. In her witness statement the claimant says that milestones set by white project board members were met, but she does not say which milestones or who set them.

183. I asked the claimant to put to BB which milestones she says were set by white project members which were met but the claimant did not put any specific allegations in this respect to BB and I am unable to find, on the evidence which has been presented, that milestones were set by white project board members which were met.

184. BB' evidence in relation to the milestone in question was that it could not be met because the content was not ready and would not be ready until the end of August. She explained that the content had been agreed by the board but it was not ready to move into the system to allow testing. II was working on getting 30 individuals to write questions and standard answers which were being kept in a large spreadsheet in SharePoint. Once all the questions had been answered they would be handed to the people doing the technological aspect of the AI project but the content was not going to be ready until the end of August.

185. That was a detailed and comprehensive answer which, to me, appeared to be honestly given. There was sufficient detail for me to be reasonably confident in its accuracy. The answer is also consistent with what BB said in her witness statement. It is apparent from the email of 25th August 2021 from BB to the claimant that, at that point, BB was saying that she had no resource to do anything and that the team was already being expected to work miracles. I do not interpret that as being any criticism of the claimant, simply a statement of the amount of work which BB and her team had to do.

186. I accept all the evidence of BB in this respect.

187. I do not find that a reasonable person in the position of the claimant would feel that the failure by a colleague to reach a milestone was a detriment. It seems to be more likely that they would simply accept that deadlines sometimes slip and there was a good explanation for it. However, even if I was wrong in that respect, there is no evidence from which I could conclude that the milestone was not met because of the claimant's race. Indeed, I am entirely satisfied that the reason that the milestone could not be met was because the content was still being written, it was in no sense whatsoever because of race.

Issue 3.1.13- On 30 September 2021 did BB talk down to the Claimant and assert her superiority over the Claimant? The Claimant alleges that she enquired if the

roadmap for the IT Directorate's implementations could flex to delay the launch of the digital workstream so that issues could be resolved and that BB **appeared annoyed, raised her voice and used belittling words to the effect of "I am the Director of IT, know your place".**

188. The version of events given in the claimant's witness statement is as follows: "On 30 September 2021, BB refused to hear my concerns about the IT workstream of the project: shouting me down in a meeting witnessed by my line manager, [DD]."

189. Thus, the witness statement contains less detail than the list of issues. The witness statement makes no reference to the words "I am the Director of IT, know your place."

190. BB's version of events is that during a meeting on 30 September 2021, when the AI project was due to go live on 4 October 2021, the claimant stated that the project had to deliver active directory filters (explained as being technology which filters to the type of person asking the question, based on their year of study or a particular characteristic). BB's witness statement said that was not, at any point, part of the project or scoping service and it was not a simple request. She says that she spoke to the claimant and said that it was not as simple as she thought, it could come further down the line but what had to be delivered was the scope which was required by the steering group. She says even if it was easy to deliver there was no time. BB says that the claimant had been over the same point for about 20 minutes in the meeting and she was frustrated and said that as Director of Library & IT services, she knew what was and was not possible with her team at that time and it could not be done.

191. In cross-examination the claimant accepted that she felt very strongly in the meeting that the project should not go live because it was not ready and she believed that it should just be switched off. In the claimant's evidence she said that all BB needed to do was switch it off and come back when it was all a bit calmer." The claimant also confirmed that she could not remember exactly the words used but believed it was words to the effect of "know your place".

192. When she was cross-examining BB, the claimant put to her that if she (the claimant) was saying to BB that she needed to turn it off, she (the claimant) would expect the system it to be turned off. In my judgment that attitude demonstrates part of the reason why relationships deteriorated. The claimant simply did not have the authority to say that to BB and yet seems to have been indignant that her direction was not carried out.

193. In those circumstances it seems to me to be likely that what BB says is accurate, namely that the claimant had been going over the same point for about 20 minutes and BB was frustrated.

194. As I have set out above, whilst I have no doubt that BB could be direct, I do not consider that she would be gratuitously rude. I think it is likely that she would have said that as Director of Library & IT services, she knew what was and was not possible with her team at that time and it could not be done. I do not find it is likely that she would use the words "know your place".

195. I also think it unlikely that BB would have shouted and I do not find that she did so.

196. The claimant's behaviour in this meeting was not appropriate for her role and I do not find that a reasonable person in the place of the claimant would believe that they had been subjected to a detriment when they were corrected by BB.

197. In any event I am entirely satisfied that not only is there no evidence from which I could conclude that BB's treatment of the claimant was because of her race, it was not because of her race. It was because of the claimant's behaviour. A white person behaving in the same way would have received exactly the same treatment.

Issue 3.1.14- Did DD watch the incident referred to at 3.1.13 take place?

198. It follows from what I have said above that even if DD did watch the incident, it cannot be said that she committed any act of detriment based on the claimant's race. Nothing was said which required DD to intervene and therefore the claimant was not subjected to any detriment.

Issue 3.1.15- On 8 October 2021, did BB **berate the Claimant in front of another member of staff (OO) and students in a café space on campus and repeatedly tell the Claimant to "go away" and "do not interrupt me" when the Claimant approached her to let her know there was a significant error with the platform that had been launched for the Enquires Hub Project?**

199. Once the Enquires Hub project went live, there were some difficulties. I find that at least some students were getting error messages when they attempted to use the system. The claimant put to BB that all of the PCs on campus were displaying the same error message, BB disputes that because the programme was not PC-based but was web-based. Nevertheless, it seems to me to be likely that if students were using the PCs to access the enquiries help, those PCs would be displaying an error message.

200. There is no suggestion that the claimant was wrong to want to raise the issue with BB.

201. There is also no dispute that at the time of the incident complained about BB was meeting with a student in a café on campus. They were sitting at a table. There is no dispute that the claimant approached them and apologised to the student for interrupting. What happened thereafter is in issue.

202. The claimant's witness statement says that BB berated her and repeatedly told her to go away and she would see her in the coming weeks. The claimant says that she was humiliated as a black woman in a space holding more than 100 students when most of the student body are white.

203. In cross-examination the claimant was asked why she would not accept that BB was busy. She stated that she would have accepted an arrangement to meet at another time but it was a business critical urgent situation and BB was obliged to hear that. It was put to her that BB had said to her three times that she was busy, the claimant replied that it could have been more than three times. It was put to the claimant that she continued to demand that BB dropped everything to speak to her and she replied that she made clear an urgent issue and that she needed to speak to her urgently as respectfully as she could.

204. BB says that the claimant, having apologised to the student, launched into a detailed and unhappy rehearsing of what had been agreed in the previous meeting and that she said to the claimant that she was in a meeting just now, she had a couple more meetings this afternoon, the claimant could see her calendar and she could put a meeting in the calendar or BB could give her a call.

205. BB told me that that was a standard response she gave to people when they were trying to catch her and she was not free.

206. There was an email exchange later in the day. BB wrote to the claimant stating that she had just kicked off a consultation meeting on a reshaping of her department that week and the meeting that the claimant had interrupted was a follow-up from that. She went on to say that her time was not her own (due to the reshaping of the Department) and if the claimant needed anything please email her and she would get back to her, hopefully within the next 12 business hours. She went on to say "but can I please ask you not to interrupt any meetings I am having (even in public spaces), particularly when I say I am busy. I am sorry if I appeared I was rude, but my staff are always going to be a priority…" (Page 451)

207. The claimant replied to say "Thank you for the acknowledgement that you were rude to me in a public space, in front of other people. I found this humiliating and unacceptable". She went on "It had not occurred to me that conversations (that may be of a sensitive nature) with staff are held in the middle of a café. I did apologise firstly to your colleague, then to you, for interrupting to ask a quick question about how best to contact you today about an urgent matter. As I was meeting a member of the Student Project Board for the Enquiries Hub project, I was trying to demonstrate allyship towards you in a public space, when there have been some issues reported by students about Alf."

208. The claimant then raised a grievance on 22 October 2021. She stated "The most recent incident happened on Friday 8 October at about 2pm in the [redacted] café. [BB] spoke to me loudly in an aggressive manner in the middle of the café, which was busy with students and staff. I did not retaliate, but instead walked away from her to compose myself, as I was shaken. I remained in the café for a short while after, as I had a catch up booked with a student at 2pm" (page 498).

209. The impression given by the grievance is that there was no exchange between the claimant and BB, BB was loud and aggressive and the claimant simply walked away. That impression is not consistent with what the claimant said in cross-examination.

210. In the grievance meeting with BB about the incident, BB accepted that she was abrupt, but said that was in the context of the claimant not leaving after three or four requests (page 651).

211. A witness statement was taken from OO when the claimant raised a grievance about this matter. He said that he did not think anything was said inappropriately or what was said was rude, but if the claimant and BB had explained their viewpoint it would have helped. He said that the claimant had said to BB something along the lines of "can I have a word with you" and BB replied "I don't have time". He also said that the exchange lasted a few minutes at most and the conversation went back and forth around 4 to 5 times.

212. I find, based primarily on the answers given by the claimant in cross-examination, that she was being persistent in wanting to talk to BB about the situation then and there. That is consistent with the evidence of the student that things went back and forth four or five times. I also find, on the balance of probabilities, that when BB believed that the claimant was not listening to her (and I find that the claimant was not listening to her) she firmly told the claimant that she was not available and that the claimant would have to put something in her calendar.

213. Again, having observed BB give evidence and seen her correspondence, whilst I find that it is likely that she was direct, I do not find that she told the claimant to "go away" or not interrupt her. It is more likely that she made her default statement as set out above.

214. I find that the claimant took exception to that. She expected BB to speak to her then and there. The claimant perceived that there was a crisis and, moreover, the crisis was caused by the failure of BB to turn off the system when she had told her to (see issue 3.3.13, above). Having regard to the seniority of BB and the fact that she was clearly in the middle of a meeting (albeit in a public space) the claimant should have withdrawn the first time that BB said she was busy.

215. In those circumstances, I do not find that a reasonable person in the position of the claimant would consider they had been put to a detriment by being told, firmly, that BB was too busy to speak. I do not find that BB told her to go away but even if she had said that, in the circumstances of this incident, I would not have found that that was treatment the claimant's detriment. It was a necessary response to the fact that the claimant was not respecting what BB had said to her.

216. If I am wrong in that respect, I find that the treatment was not because of the claimant's race. The named comparators do not assist the claimant because they were not in the same situation as she was. I am entirely satisfied that anyone who behaved as the claimant did would have received the same response from BB.

Issue 3.1.16-On 26 October 2021 did CC sent the Claimant a harassing and gaslighting email regarding the Dignity at Work conversation requested by the Claimant regarding the fact that the Claimant felt excluded from the working party on sexual harassment? The Claimant alleges that CC responded to the Claimant directly, rather than through the HR mediation provision in the policy. CC refuted the existence of a working party on sexual harassment, using litigious phrases which were beyond the Claimant's understanding, including "working relationships issue". The existence of the working party on sexual harassment was evidenced in the pursuant formal grievance against the Claimant, escalated to by CC. The Claimant alleges that CC referenced information that she was party to from a grievance matter on racism and working relationships brought by the Claimant in 2020

217. On 20 October 2021 the claimant wrote to CC stating: "I'm getting in touch because I would like to have a Dignity at Work conversation with you, please. I'm not looking for any trouble: I simply wish to let you know about something and explain how the situation felt from my perspective. If you can recall the situation, then I am comfortable to hear your perspective on it too. Can you let me know if you would like to meet with me?" (Page 456)

218. The claimant says that she believed she was bringing her Dignity at Work complaint under the 2017 policy. She said that the 2021 policy was not published at the time. I find that the claimant was wrong in that belief. The policy itself says that it was effective from 11 October 2021 and there is no evidence to doubt that it was published at the time it was effective.

219. I have set out the relevant paragraphs from the 2021 policy above. However, even if the 2017 policy was the relevant one, it is still clear that the purpose of raising a Dignity at Work conversation was to deal with harassment or bullying (see page 289).

220. CC replied to say that she was happy to have a conversation and asked her to ask a Dignity at Work contact to arrange the meeting.

221. On 21 October 2021 JJ wrote to CC stating that she was a Dignity at Work contact and seeking to arrange a dignity at work conversation between CC and the claimant.

222. CC replied to state that she was going to accept the Dignity at Work request and that she was concerned if she had done something that had affected the claimant's dignity at work. She asked to be notified in advance as to what it was that she had done and stated that she found herself in a very stressful situation, so she would like to have some idea.

223. On the same day, JJ replied to say that the claimant had come back with the following explanation "I feel that I have been excluded from the working party on sexual harassment, despite my contributions to the discussions at Student Experience Excellence Group. I would like to know why, as I feel like my contributions are not valued" (page 471)

224. CC, having seen that email, then an sent email to the claimant which is alleged to be the harassing and gaslighting email. It is necessary to set it out in full.

> I am responding directly to you and ccing [JJ] as she sent the email. I decline the invitation because, having read the reason you have given below, there are no grounds for this conversation.
>
> There is no "working party on sexual harassment". There are no members, and there are no staff who are not members, because there is no working party. You have never asked me any question about a "sexual harassment working party", its existence or otherwise, but it would have been a simple question to ask and answer.
>
> I am very upset to have received a dignity at work request, with its implications of disrespectful, bullying or harassing behaviour on my part, for something that only required a simple question from yourself - either in person, via teams, over email or in SEEG. I am at a complete loss as to why you would not have taken two minutes to ask me about the "working party on sexual harassment".
>
> Although a moot point, I similarly do not understand why you feel that if you are not a member of a group, that you are excluded. That in choosing to frame this within a dignity at work context (and even just in choosing the word "excluded") you raise the prospect that I personally, have bullied or harassed you by "excluding " you from something. Every member, of every related committee or group is not "excluded" from a working party simply because they are not members of a working party.

> I am very upset also that the Dignity at Work policy is being used in this way. I feel strongly that this policy, designed to help relations between colleagues, has instead been used without any basis in fact, without any caution as to whether there was a basis in fact and has caused needless stress and anxiety to myself as a result. I will ask HR to consider this issue.

225. The first part of this allegation is that it was wrong of CC to reply to the claimant directly rather than through the HR mediation provision in the policy. I do not consider that to be the case. The policy does not say that should be the process and, as set out above, both parties in this case agree that anyone could decline a Dignity at Work conversation. However, it is an example of why this policy causes difficulties. The Dignity at Work process is neither a conversation, within the ordinary meaning of the word, nor a grievance, there is a vacuum of information for recipients of a complaint as to how they should respond. I do not find anything in the policy that states that once somebody has been complained against they cannot communicate directly with the complainant. I do not consider that a reasonable person in the position of the claimant would consider they had been subjected to a detriment because CC responded directly to her.

226. The next part of the complaint is that CC refuted the existence of a working party on sexual harassment. That raises the question of whether there was such a working party.

227. The claimant's case in this respect is founded on the minutes of the Student Experience Excellent Group which was held on 2 June 2021. At paragraph 3 the minutes record "[CC] proposed a working group for action points in the sexual harassment guidance. [CC] and [AA] have agreed the make-up of the group and will be emailing group members shortly." (Page 1262).

228. In the course of the claimant's grievance around this, AA was asked to clarify whether a working group on sexual harassment was discussed at that meeting (he was the chair according to the minutes). He said that the minutes were erroneous and should have referred to the Report and Support Implementation Task and Finish group. In answer to my question he stated that "Report and Support" is a platform which was external to the University where people could enter information about incidents they wanted to report. An implementation task group had been set up to implement the platform for the University. He said that he asked the group to come together in June 2021 and the platform was launched in September 2021. Following the discovery of the mistake in the minutes of 2 June 2021, at the meeting of the Student Experience Excellent Group on 2 February 2022 the minutes were corrected. The minutes from the later meeting record, in any other business, "It was noted that in the notes of the meeting held on 2 June 2021, reference to the sexual harassment working group

was noted incorrectly. This should have related to report and support. Notes to be amended accordingly and to come to the next meeting" (page 1266).

229. A corrected set of minutes was prepared (page 1268).

230. I must find as a fact whether or not a working group for sexual harassment existed. The only evidence for it is the minutes to which I have referred. To find that such a group did exist I would need to find that both AA and CC have lied to the tribunal. This is not an area where they could have been mistaken.

231. The claimant has not pointed to any colleagues who were on the working group, and if such a working group did exist, I would have expected the claimant to be able to point to more evidence of it than a single set of minutes. It is possible to see how the Report and Support Implementation task group would have been erroneously labelled as a sexual harassment working party.

232. On the balance of probabilities, I am satisfied that a working party on sexual harassment did not exist. Part of my reasoning for so finding is that there was no need for CC to so flatly deny the existence of such a group in her email of 26 October 2021, she could simply have advanced her argument that just because the claimant was not invited to be a member of the group it does not mean that she was excluded. If CC was lying, it was a lie which would easily be uncovered, the existence of a working party would not be easy to hide. There is even less reason for AA to lie, no grievance had been raised against him and it was not put to him that he had any reason to lie.

233. In those circumstances, in being told that there was no working party on sexual harassment, the claimant was not being gaslighted, either within the definition of the Oxford English dictionary ("To manipulate (a person) by psychological means into questioning his or her own sanity") or by the claimant's own definition ("where someone creates a version of reality that isn't reality to deliberately mess with someone's head"). The claimant was being told the truth.

234. The next part of this allegation is that in the email CC used litigious phrases including "working relationship issue". In cross-examination of CC the claimant also referred to the word "moot". In my judgment, in context, neither phrase was intended to be read as a litigious phrase. Although the word "moot" has an old history of being a phrase associated with the law, it is frequently used in everyday language to mean a point which is of no practical relevance and I find, having heard the evidence of CC, that is what she intended by it. She was saying that because there was no working party, her next point was irrelevant, (which was that just because you are not a member of the group does not mean that you have been excluded).

235. I do not consider the response from CC to be inappropriate. The claimant had put in train a process which would result in notes being put on CC's file, which was necessarily accusing CC of bullying or harassing her (because that is what the purpose of the dignity at work policy was for). It should not be forgotten how upsetting such an allegation is to somebody who is the recipient of it. Such allegations are not received in a vacuum, they have a very real impact on the person against whom they are made, such allegations can affect careers and personal relationships. The claimant, in evidence, accused CC of turning herself into the victim. That allegation shows a lack of understanding on the part of the claimant as to the effect of the allegations which she had made. Moreover, the initial allegation was unnecessary, a more appropriate response would have been for her to speak to CC and ask why she had not been asked to be on the working party on sexual harassment.

236. I have considered the argument advanced by the claimant (at least implicitly) that in some way the relationship with CC had become so hostile that she could not have such a conversation. It is difficult to find a factual basis for such a belief given that after the meeting in May 2021, the claimant suggested that she was grateful for the meeting (page 385) and in her witness statement she points to nothing else that could have caused a deterioration in her relationship with CC. Indeed on 25 October 2021 the claimant had written to CC stating:

> Hi [CC],
>
> I was wondering if you have 10 minutes this week for some (not work related) advice. Dog related.
>
> Thanks,
>
> YR
>
> (page 469)

237. I consider that a reasonable person in the position of the claimant would have taken a step back upon receipt of the email and reflected upon their own behaviour, having done so, they would not reasonably have regarded the email as being to their detriment. Moreover, again, I am entirely satisfied that the reason for the email was nothing to do with the claimant's race. Having heard CC give evidence and having regard to what is said in the email, I am satisfied that she would have sent such an email to anybody who had raised a Dignity at Work conversation about why they had not been invited to be on a non-existent working party.

238. That is enough to resolve this issue, but it is useful at this stage to recite a further part of the history as part of the background to the claim of unfair dismissal.

239. On 2 November 2021 CC wrote again to the claimant stating that she had heard from HR that the claimant had accepted that she had declined the Dignity at Work request but that since the claimant had initiated the process, she might have responded to CC also. That, CC said, would be the right thing for her to do. She said that she had emailed her directly and personally to outline her concerns and the fact that she had not heard from the claimant as to why she chose to raise a Dignity at Work process continued to upset her. She concluded “on a very human level, I do not understand why you have treated me and continue to treat me in this way” (p484).

240. On 16 November 2021, the claimant then raised a grievance against CC about the emails which she said were gaslighting her and on 25 November 2021, CC raised a counter grievance against the claimant based on use of inappropriate Dignity at Work processes and associated points.

Issue 3.1.17 On 9 February 2022 was the Respondent’s Programme Evaluation Policy approved at its [redacted] Committee without the Claimant’s contributions and perspective credited? The Claimant alleges credit was afforded to QQ, Head of Technology and Enhanced Learning, a white male. See also 3.4.2 below

241. The policy is in the bundle at page 838. On the second page it contains what might be described as functional matters, such as the document title, the approving body, the date of approval and so on. It also contains "Role of Responsible person and Department". The information in that respect is given as “Director of Academic Quality and Development; Head of Technology Enhanced Learning and Digital Literacies”.

242. The claimant’s assertion is that she had a great deal of input in forming the policy (in cross-examination she said that she wrote half of it) and she should have been recognised.

243. The claimant has not argued (at least before she gave evidence) that she was in a role which was responsible for the Program Evaluation Policy and there is no evidence that she was.

244. The Director of Academic Quality and Development was LL and the Head of Technology Enhanced Learning and Digital Literacies was QQ. The claimant’s complaint appears to be that it was the fault of LL that she was not listed as a joint author of the policy.

245. The claimant has adduced no evidence which would support an argument that she was in a role which was responsible for the Program Evaluation Policy. The claimant’s statement in paragraph 94 of her witness statement that QQ’s role as a contributor was credited is, in my judgment, wrong. Nothing acknowledged him as a contributor to the policy, his job role was recognised as being responsible for the policy. If QQ had resigned and

a different person had been appointed to his job, that person would be then responsible for the policy. The question of authorship is completely separate.

246. The arguments advanced within the claimant's witness statement, that QQ was acknowledged because he was a white male whereas she was not, is different to the argument which the claimant was advancing at the time. In her Dignity at Work complaint, which was particularised on 2 March 2022, the claimant's point was recorded as follows "YR raised the point that academic sources are always cited and that this isn't the same for professional services, that it's only Directors that usually get put on the policy. YR did acknowledge that QQ's name had been cited on the policy and said this was really positive." (Page 908). Thus, at this stage the issue was not one of race but the way the university differentiated between academic staff and professional services staff.

247. It is right for the claimant to say that some policies do name the authors- such as the Mental Health Strategy and the Dignity at Work Policy. However, the policy in question does not show any authorship and, therefore, the claimant has been treated in exactly the same way as the other author(s) of the document. I find that the claimant was not in a role which was responsible for the policy and therefore, in not being named as responsible for the policy, she has not been treated less favourably than anyone else in the same circumstances would have been (the respondent does not name people as responsible for the policy who are not responsible for the policy).

248. None of the named comparators were in the same position as the claimant, none of them were authors of this paper and in any event, none of them were named on it.

249. A hypothetical white comparator in the same position as the claimant would have been treated in the same way.

250. Even if the claimant had been treated differently, the claimant's own explanation at the time was that it was because of the way the University treated professional services staff, it was nothing to do with race.

Issue 3.1.18- From 17 October 2021 to 2 March 2022 was there a delay in organising the Claimant's Dignity at Work meeting with LL on the Programme Evaluation Policy

251. On Tuesday 19 October 2021 the claimant wrote to LL stating "'I am getting in touch because I would like to have a Dignity at Work conversation with you, please. I'm not looking for any trouble: I simply wish to let you know about an incident and explain how the situation felt from my perspective. If you can recall the incident, then I am comfortable to hear your perspective on it too. Can you let me know if you would like to meet with me?

252. LL replied to say that she could meet in person on that day at 1 PM if the claimant was free. That was not convenient for the claimant who asked to meet on Thursday or Friday. LL said that she could meet on Thursday or Friday via Teams but she was going into hospital for an operation the next week and would be off until 4 January 2022. The claimant suggested Thursday would be good.

253. It is not clear what happened next. On Wednesday 20 October 2021, LL wrote to the claimant asking for information about what the incident was (Page 457). It appears there was no immediate response to that email. However on Thursday, 21 October 2021 JJ wrote to LL stating that she had been asked by the claimant to arrange a dignity at work conversation with her and attached a video guide and the policy. JJ asked LL to let her know her availability of the next few weeks. She also noted that the claimant had requested that JJ attend as a Dignity at Work contact to take notes (page 634).

254. LL replied to point out that she was going into hospital for a major operation on Monday and would not be in work until 4 January 2022. She stated that she had agreed to meet with the claimant but asked what she wanted to discuss, the claimant had not responded and they have not met. She said that she had found it very stressful to receive the email on behalf of the claimant just before going into hospital, she said that she accepted the invitation to meet when she returned to work in 2022 and would require a dignity at work contact to be present. (Page 633)

255. Thus LL went off work without knowing what the allegation against her was.

256. On 26 October 2021 JJ wrote to the claimant in respect of the dignity at work request and that HR had said it would be necessary to wait until LL was back at work as it would not be appropriate for anyone to contact while she was off sick. The claimant replied to say that sounded fine (page 480).

257. For reasons which are not entirely clear, JJ then wrote again to the claimant asking if she wished to raise anything further with HR about the situation with LL to which the claimant replied just that waiting until January 2022 did not feel like an early resolution and she would prefer to find a solution sooner. She did not suggest any way in which that could be done. (Page 479)

258. On 27 October 2021 WW wrote the claimant stating that it would be inappropriate to attempt to progress the matter until LL returned to work.

259. Thus, it can be seen that there was a delay in arranging the meeting, which was entirely due to the illness of LL.

260. The claimant has provided no suggestion as to why she thinks the delay was because of her race. The fact that the claimant proceeded with this allegation when she was represented by solicitors and has continued to do so to this hearing strongly suggest that the claimant has simply decided that everything that has happened to her about which she is unhappy must be to do with her race. However, that is not sufficient for the purposes of a finding of race discrimination. It would be absurd to suggest that LL went into hospital because of the claimant's race and there is no suggestion that a dignity at work conversation can be resolved in any other way and having a conversation with the person against whom the complaint is made.

261. The claimant has not proved any facts from which I could conclude that this allegation was because of her race.

Issue 3.1.19- Was the Dignity at Work meeting with LL held on 2 March 2022, and responded to by LL on 13 April 2022, conducted in manner that was contrary to the training materials for these conversations provided by HR? The Claimant contends her concerns about her exclusion from the Programme Evaluation policy document were dismissed.

262. The claimant's complaint in this respect is that although she accepts that LL listened to what she had to say and said that she would get back to her in due course (see the minutes at page 908), the training materials gave the impression that the meeting would be a positive space where there would be dialogue and because there was no dialogue the conversation was hostile.

263. The minutes show that the claimant wanted a conversation about recognising people's contribution to things, which had come to the fore when the claimant had done a leadership programme which had raised the issue of young researchers and their work not being cited. She went on to say that her contribution to the Program Evaluation Policy had not been cited by LL or recognised. The claimant said that it happened to her before and that academic sources are always cited which was not the same for professional services. She said that it was only directors who usually got put on the policy. It was in that context that LL had said that she would consider her response and get back to the claimant in due course.

264. The minutes, such as they are, are described as a summary and the ordinary reading of the minutes is somewhat different to the summary of the meeting given by LL in her later email of 13 April 2022 where she suggests that the Program Evaluation Policy was only discussed towards the end of the meeting and the claimant had said that was in the past.

265. It is not obvious to me from the Dignity at Work policy that there could be an expectation on a person in a meeting to give an immediate answer to any accusation which is made against them. It is apparent from the email from LL dated 2 March 2022 at 18:54 that LL had found the meeting difficult.

She stated that she had been extremely stressed by the meeting and noted that the main issue which the claimant had raised had not been one that she had been notified about in advance of the meeting.

266. From the contemporaneous documents, it may be doubted whether LL was wholly correct to state that the main issue which the claimant had raised in the meeting had not been one which she had been notified about. On 11 January 2022 JJ, HR, had written to LL stating that the claimant had said the meeting was for the following

> "I would like to meet with LL to let her know that when I read the revied Programme Evaluation Policy, I felt disappointed that whilst I am ackno wledged as an interviewee and member of the working party, no further input from me is acknowledged.
>
> Another colleague's input has been recognised more clearly. I felt that I made a significant contribution to the revisions and I enjoyed working on the policy, as I thought it would provide an opportunity to demonstrat e policy work in my job role/skills."

267. It is right to say that the claimant had not flagged up wanting to talk about recognition of contributions generally, but LL did know that the claimant wanted to talk about her own contribution. The only way in which LL's view can be seen as accurate as if the summary of the meeting has not given proper emphasis to the way in which issues were discussed.

268. In any event, on 13 April 2022, LL wrote to the claimant setting out her response. She pointed out that the claimant had said, at the outset of the meeting, that the issues that the claimant wished to raise were not about the claimant and LL. That meant, in LL's, view that the dignity at work policy was not appropriate because it related to complaints in relation to members of staff. She pointed out that how researchers were identified in papers and how the University presented policies was nothing to do with her. In respect of the Program Evaluation Policy, she pointed out that QQ's name was not published on the Program Evaluation Policy but his role as Head of Technology Enhanced Learning was.

269. I do not find that the meeting was held in a manner which was contrary to the training materials. I have not been shown any training materials which suggest that a resolution must take place at the meeting or that a person could not take time to think about their answer to an allegation. Thus, I do not find that this allegation is made out factually.

270. If it was, there is no evidence on which I could conclude that the desire of LL to take some time to think about her response was because of the claimant's race or that a white person would have been treated differently to the claimant.

Issue 3.1.20 – In Professor FF's assessment report into working relationships between the Claimant and named Colleagues dated 14 September 2022, was there a reference to the fact that colleagues 3.1.21 3.1.22 expressed irritation that she engaged with all items on the agenda at a committee meeting?

271. By August 2022 the claimant had raised a number of dignity at work requests (see page 646 which lists requests with seven different people) as well as three grievances. AA, reasonably I find, concluded that there were significant issues in the claimant's working relationships but also that it was not obvious what the solution was. He decided that the University could not simply let the situation continue and he asked FF, Deputy Vice–Chancellor and Provost to conduct a review into relationships. The terms of reference for the review are at page 1041 of the bundle and were sent to FF on 8 August 2022.

272. FF's report was sent to AA on 16 September 2022 following various interviews with the claimant's colleagues (as well as the claimant). The report stated "This is because working relationships between [DD, BB, and CC and the claimant] have deteriorated to the point that all parties are putting the most negative possible interpretation upon the actions of the other. For example, several parties expressed irritation with the fact that [the claimant] engages with all items on the agenda during a committee meeting and [the claimant] interpreted a delay in getting her a sit/stand desk as deliberate. Both opinions are, in my view, unreasonable."

273. In her evidence the claimant clarified that she was not asserting that the report itself was an act of discrimination but was complaining about the fact that colleagues had expressed irritation with her.

274. It is, therefore, necessary for me to recount some of the interviews which FF had with the claimant's colleagues. Because part of those interviews are also relevant to the question of whether the claimant's ultimate dismissal was fair or not, I will set out more detail than is strictly for the resolution of this issue. There is no suggestion that the minutes are inaccurate and, therefore, I find that they accurately reflected what people said to FF.

275. In the interview with DD there are the following questions and answer:

> **Do you think it is impacting on the wider business of institution?**
>
> I would say her behaviour with colleagues takes up a lot of air time. Those of us you are probably speaking to, have probably taken far too much time having this at the front of our minds, talking about what can we say, walking on egg shells.

I would say it is perfectly obvious at committee meetings when there is engagement from that individual. I feel there is quite a 'here we go again' vibe. Sometimes she has helpful information.

Domination.

People ask me as her manager - Why does she have to comment on every single paper? What's her job? How does she have time to read things to such a level of minutiae.

…

How is this impacting on your wellbeing?

I would say it has caused poor mental health for me. I know myself well enough to know when things aren't going alright, but doesn't mean I can control the situation. I dread walking past her door. I get physical symptoms when engaging with her, palpitations. I have a long term thing – don't know what it is, could be quite serious. Flared up in January again, crippling pain. Back and forth to GP and hospital investigations. It is not caused by her but when it flared up – he asked about stress going on which would have impacted this.

…

What can be done?

There is a lack of trust and confidence in both sides

YR has none in me as a manager.

I have very little in her now because of how she is with me.

I feel institutionally there is a lack of trust and confidence – she doesn't trust the institution. I don't understand why she constantly wants to bad mouth/pull apart the institution, make negative comments about her own department in meetings – I don't understand why someone wants to work somewhere that is so disagreeable to them.

My relationship is irreparable at this point. She has no idea of the impact she is having. Don't want her to know. Don't have the trust and confidence that there would be any understanding so why would I share.

276. In the meeting with BB there are the following questions and answers.

Was there ever a time when good?

No. I made mistake of being honest around a project that she had been involved in? Enquiries Hub. I mistakenly thought I was there to offer support, suggestions etc and stated we weren't in a position to put something in a building without infrastructure. I thought I had done it respectfully and outlined reasons. I undermined her baby from that day. Irrationality started to kick in quite quickly.

Previously been in committees where she is irritating, has to be seen by the Chair, prove she has read the papers etc. She isn't the only one, but she does it.

I was pulled into enquiries hub project and has issues from that day.

Since then?

Been blanked as walk by and say good morning.

May/June time, turned back on self, shouted back at the corridor, going back to HR and said shes asking for another meeting as she still feels I was racist. In corridor outside SS.

Did you do anything?

Tried to deescalate it

[redacted] came along, get on well with her. Then YR just faded.

Did say to HH that day – to warn him it was starting again.

Would you say the fact you have no working relationship with YR impacts on your dept or wider business

In all honesty no – I don't know what she does.

If she comes along it tends to be more of a problem.

Demanding as a customer.

Didn't impact me and lots out there.

Some have more realistic demands than others.

You think the only resolution is her going?

Only that or you lose yet more people.

She has us all at the brink.

How [DD] gets on I don't know.

[LL], this is part of why she left. No one could be her buddy as we had all been in the same mangle.

How do you know about LL?

She shared it with a group of us

I'm sure there was more going on, but to be told 6/7 people can't come to a meeting as peer support, because I too have a grievance or complaint in should say something. Can't ask someone lower to support you in that situation.

277. In the meeting with MM :

How would you describe your current working relationship with YR?

Don't have much contact at all, first thing to say.

Bit of contact when carried over enquiries hub project. Claire and I met a couple of times over teams. Fine, no problem. Actually met in person.

Seen twice since then. She sat next to me at Student Experience Committee. Fine. Perfectly civil.

Saw in the common room when I was waiting to go into a disciplinary hearing. Fine.

I treat her the same as I did before she raised dignity at work issue with me. No awkwardness. No real work dealings at all

278. In the meeting with CC:

How would you describe your current working relationship with YR?

4 things:

Undermined and upset

Confused and uncertain in relation to her

Wary

Behave professionally, will, want to, tried to, don't know what she does, don't see outputs, wouldn't choose to work with her, but if I had to I would attempt to be as professional as possible.

The reasons I feel undermined and upset:

The 2 dignity at works are context. Anyone who goes through an informal dignity at work, is subject to being told someone feels bullied or harassed by you. It's deeply upsetting. YR started so bizarrely saying I don't want any trouble. I don't understand that. Who wants trouble?

It all started in Oct 21 not resolved until Feb 22 – that's a very long time to feel the way I felt. My job is about equalities and treating people with respect. I pretty much revised the dignity at work policy. To be accused twice, and not to know how it was going to be resolved was not good for my health.

My job is all about conflict and resolution. I take things on the chin. I know she went on long term sick very soon after I put my responses in. I do understand how stressful it can feel but I was feeling it too.

In all of that, every part of that could have been easily avoided by just asking a simple question of me before any of this. Is there a… can I join the…sexual harassment working party. Totally avoidable so then a process designed to avoid conflict it brought it.

I don't understand. Makes me feel suspicious.

…

I have seen other members of staff deeply affected, more deeply than I was. On [LL] 's final day I arranged to meet her to say goodbye. I was the last person to see her. Took her for a quiet moment to [redacted]' for a lime and soda. She was visibly shaking. Experiencing some trauma effects. Throughout 2 hours we spent she repeatedly said, 'this is because of that individual'

LL was retiring after a very successful professional career. Her final day might have been sad, it shouldn't have been traumatic. Many others, I know experience deep trauma. Which would make me feel worried for other people.

…

So YR took 2 dignity at works against you?

…

She has blanked me as she passes me. I don't enjoy working like that . I'm a Director, I hope how I behave models good behaviour. To deliberately walk past someone I know is choosing to pretend I don't exist. I wouldn't do that unless forced to. I would say hello, talk civilly. I don't think she would want to speak to me, I wont force her to.

Strongest language – to be wary of her and would not volunteer to work with her.

So you feel it is unresolvable?

Complexities within that individual so I would never not feel wary. Always be professional. Ask for every single minute where we share things now, read everything before approve. Would recommend to every single person who does that they do that if minutes are scrutinised to find things.

279. In the meeting with NN:

How would you describe your current relationship with YR?

Non existent. Not worked with her since the dignity at work conversation.

Why?

Partly because she is less around, I have given her a very wide berth.

Would you say that your understandable need to do that has had any impact on your ability to do your job/the organisation?

Not my job.

On the organisation in that there are things we could have worked on together that could have improved things for the organisation, but I'm very hesitant to do that now.

Your decision to give a wide birth – why is that? Angry? Or?

…

Not angry with her. Annoyed about policy but blame us for allowing her to weaponise it. There was an agenda within that which enabled her to use it.

> What do you mean agenda? To have so many simultaneous and target so many valuable people to the organisation. [BB] has been systematically targeted. [LL] it's one of the key reasons she went.
>
> **How do you know?**
>
> [LL] and I talked.

280. Thus, the complaint about the claimant's behaviour in meetings was made by BB and DD. In cross-examination the claimant accepted that she did engage in detail in meetings. She stated that if somebody has worked on a particular agenda item she would want to show appreciation and enter into discussion with them. She said that she found it unacceptable that people did not comment on other people's work and that she found it negligent not to contribute to important topics. She said "if that irritates people – tough".

281. It is clear from DD's comment that people asked her, as the claimant's manager "Why does she have to comment on every single paper?" Thus, I find that it is likely that the alleged irritation went somewhat wider than simply BB's and DD's experience.

282. I must consider, firstly, whether it was to the claimant's detriment that she was described as irritating and I accept that it was. Nobody wants to be thought of as irritating.

283. I must also consider whether the comment was made because of the claimant's race. In this respect the claimant could give no specific explanation as to why she thought the comments were made because of her race but repeated that the cumulative number of issues towards her by her colleagues left her with no explanation other than it was because of her race.

284. I have not found any evidence of racism on the part of the respondent's witnesses. I accept, of course, the claimant's argument that racism is not overt, and I must apply the decision of the House of Lords in Nagarajan that many people are unable, or unwilling, to admit even to themselves that actions of theirs may be racially motivated. However, does not mean that I can simply assume that racism exists in the absence of evidence. I can see no evidence that the respondent's witnesses were subconsciously behaving as they were because of the claimant's race. It is much more likely that they were behaving as they were because of the way the claimant behaved. The claimant herself accepts that she would engage in detail with agenda items and she considered it negligent if other people did not. Anybody with experience of working on a committee knows that for many attendees, time is precious. If an agenda item is not controversial many people would rather simply move onto the next point rather than have a sterile or academic

discussion about something which everyone agrees on. It is much more likely that that is the reason why people said that they were irritated that the claimant engaged with all of the items on the agenda, rather than because of the claimant's race and I find accordingly.

285. Again, I can find no evidence from which I could conclude that the claimant was treated as she was because of her race.

Issue 3.1.21- Did the Respondent fail to or decide not to redeploy the Claimant into the Head of Operations role on 17 October 2022?

286. This issue can only be addressed in the light of the decision to dismiss the claimant and I will return to it in due course.

Issue 3.1.22- Did the Respondent terminate the Claimant's employment on 27 October 2022? The Respondent accepts that it did dismiss the Claimant on this date.

287. Whether the dismissal was because of race, again, needs to be considered in the light of the claim of unfair dismissal and I will return to it.

Issue 4.1- Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?

288. It is conceded that the claimant was disabled by way of anxiety and depression from May 2021 to October 2021. It is not conceded that the claimant was disabled by reason of work-related stress, post-traumatic stress, neck pain or arm pain.

289. The claimant has provided two disability impact statements. The respondent's primary point in relation to the issue of post-traumatic stress disorder is that the claimant has not had a formal diagnosis. The claimant says that she has, as part of the Italk service. I consider that the claimant is correct in this respect. At page 176 of the medical bundle, the claimant's general practitioner has written "YR has a history of mental health issues since 1994 and has been under various doctors in this time. She has a history of anxiety, depression and PTSD and was previously sectioned under the Mental Health Act aged 21 years old. She remains on antidepressant therapy."

290. Of course, the letter does not say what the effect of the PTSD is on day to day activities, but it would be impossible for me to separate out the effect on day-to-day activities of the claimant's anxiety and depression (which the respondent admits is adverse, substantial and long-term) from the adverse effect of the PTSD. In reality, all three conditions are likely to contribute to the claimant's difficulties and doing the best I can (admittedly on a somewhat rough and ready basis) I concluded the claimant is disabled by reason of PTSD. I apply the same analysis to work related stress . Putting matters another way, the combination of anxiety, depression, PTSD and workplace

stress amount to a mental impairment which, at the material times had a long term, substantial, adverse effect on day to day activities.

291. In respect of the claimant's neck and arm pain, at times during the case, the claimant seemed to be suggesting that the neck and arm pain was caused by the tension which was, in turn, caused by her mental impairments. My focus, however, should not be on the precise medical cause of the symptoms, but on whether the claimant, as a matter of fact, has a physical impairment which causes a substantial adverse effect on day-to-day activities.

292. In her first impact statement the claimant says that she is unable to go out to walk the dog routinely, she is unable to push the big trolley at the supermarket due to arm and neck pain and she is unable to carry out house and garden chores. She talks about pain when working seated at a computer desk for any length of time.

293. In the claimant's second disability impact statement she referred to the treatment she received from the respondent and stated "their negligent, incompetent and harmful actions caused my post-traumatic stress disorder and amplified the neuropathic pain (stress-related) to my neck and arm. It is unclear how long the impairments are expected to last. They come and go, when triggered." (Medical bundle page 9). That statement also refers to taking co-codomol, poor sleep (sometimes), no golf (impact on social activities) and attending the gym to encourage muscle strength and movement and attending yoga. The claimant refers to limit/manage shopping trolley weight.

294. There is, in the medical evidence bundle, a Universal Credit Medical Report Form completed by a registered nurse on 20 December 2023. Upon examination the claimant had a range of movement in the neck and arms (pages 154 – 155) and the summary report suggested that the musculoskeletal examination showed some difficulties with neck movements but the rest was unremarkable. The GP letter of 11 April 2024 to which I have referred makes no reference to problems with the neck or arm.

295. The evidence, therefore, of there being any substantial adverse effect on day-to-day activities as a result of the claimant's neck and arm pain is extremely thin.

296. Part of the difficulty in this case is the significant lack of detail which the claimant has gone into in her impact statements (despite having asked for and being granted an adjournment of a two-day hearing in order to provide more detail).

297. Because of the claimant's statement that gets pain if she sits at her desk for any length of time, I am just satisfied, on the balance of probabilities, that

the claimant has a physical impairment which has a substantial (more than minor or trivial) and adverse effect on her day to day activities. There is no dispute that it was long term. Therefore, I conclude (just) that claimant was disabled by reason of neck and arm pain.

Issue 5- Direct disability discrimination

Issue 5.1.1- Was the Claimant unsuccessful in her application for the Director of Policy and Projects role submitted in April 2022 and did she receive no feedback on her application? The Respondent accepts that the Claimant applied for the role on 5 May 2022 and was not shortlisted or invited to interview for the role

298. There is no doubt that the claimant was unsuccessful in her application, she was not invited for interview.

299. The respondent says that was because the claimant did not illustrate that she satisfied essential criterion E4, which was "extensive experience in and understanding of university program administration" (page 962).

300. The claimant had submitted an application form which appears at page 954 and her CV, which appears at page 958. In her evidence and in cross examination of the respondent's witnesses she stated that she demonstrated that she met that criteria by the entry on her CV of "Volunteer Positions-Trustees Association of University Administrators, August 2021 – present". The claimant does not suggest that she addressed the essential criterion at all in her application form although I note that she makes reference to becoming a trustee of the Association of University Administrators in 2021.

301. It was obvious from the way the claimant cross-examined the respondent's witnesses that she genuinely believes that it was sufficient to satisfy the essential criterion just to show that she was a trustee of the Association I have referred to.

302. In my judgment AA and HH were entitled to take the view that the claimant had not shown that she had extensive experience and understanding of university program administration. A trustee of the Association of University Administrators might have such experience, but it is not obvious that they must have such experience. The claimant did not suggest (and has not suggested) that it was a requirement to become a trustee of that Association that a person had extensive experience of university program administration and generally speaking trustees are appointed to associations for a range of different reasons. The strength of a trustee board is, usually, in its diversity. Someone may be experienced in finances, someone else in employee relations, someone else in administration and someone else in, say, fundraising. I do not consider that the simple fact that the association in which the claimant was a trustee was the Association of University Administrators automatically means that the

claimant met the essential criteria of having extensive experience in and understanding of university programme administration.

303. Moreover, the essential criterion was a reasonable one when one looks at the job role. It was a director level role to position the University in respect of significant policy and regulatory change.

304. I find that, GG and HH genuinely (and reasonably) believed that the claimant simply did not show in her application that she met that essential criterion. I find that the reason she did not get the role was for that reason only.

305. That leaves the question of feedback. The claimant had wanted written feedback but was told that the University did not provide written feedback on criteria deficits and that feedback would come from AA (page 984). The claimant was happy with that and replied "no worries… I shall contact AA as advised."

306. The claimant did contact AA who replied on 27th May 2022 stating "… Very happy to do this. I am on leave next week, but we will get something in for when I'm back." (Page 987).

307. Thereafter nothing happened.

308. The claimant said in cross-examination that she did not know if a meeting was set up but she probably did not send a chasing email. She stated that she was so annoyed with everything by that point that she didn't care.

309. I do not consider that the onus was on the claimant to chase up AA; he should have followed up when he returned from leave. On the other hand, it is important not to be unrealistic about the likely pressures on a Pro Vice–Chancellor and it would not be particularly surprising if things got missed on occasion. The failure by the claimant to chase AA up means that it is more difficult for her to be able to advance any evidence that he was deliberately avoiding giving feedback. Given the positive terms of his email of 27 May 2022, it is more likely that he was intending to give feedback and forgot than he was deliberately seeking to avoid giving feedback.

310. I asked the claimant what it was about her disability that she felt meant that she got no feedback. The claimant could not point to anything, simply saying that she found it difficult to "silo" race and her disability. The claimant also stated, however, that "the point is that I should have got the interview because [the respondent] is a disability confident employer."

311. It seems to me that this claim has been advanced as a disability discrimination claim because the claimant believes that because she was disabled and because she met the minimum criteria, she should have been

given an interview. However, that is a misunderstanding of how the law on direct discrimination works. It is necessary for me to consider whether there are facts from which I could conclude that the claimant was not given the job or the feedback because she was disabled. Or, to put the matter another way, would a person who was in exactly the same position as the claimant but not disabled, have been given feedback.

312. There is no evidence that such a person would have been given feedback and there is no evidence from which I could conclude that the claimant was not given feedback because she was disabled.

Issue 5.1.2 - Did the Respondent fail to ask what reasonable adjustments could be made in order to allow the Claimant to continue working for the Respondent in her meetings with the Respondent on 6 and 13 October 2022

313. I find that the claimant was not asked what reasonable adjustments could be made in order to allow the claimant to continue working for the respondent. GG admitted as much.

314. This claim does not, however, work as a direct disability claim. A non-disabled person in the position of the claimant would not have been asked what reasonable adjustments could be made in order to allow her to continue to work with the respondent.

315. In those circumstances the claimant has not suffered less favourable treatment than a nondisabled person would have been.

Issue 5.1.3- Was the Claimant unsuccessful in her application for Head of Operations on 17 October 2022 and did she receive no feedback on her application? The Respondent accepts that the Claimant applied for the role and was not shortlisted or invited to interview for the role

316. The failure to award the claimant the Head of Operations role was tied up with the decision to dismiss her and I will return to this issue below.

Issue 5.1.4 – Did the Respondent terminate the Claimant's employment on 27 October 2022? The Respondent accepts that it did dismiss the Claimant on this date

317. Again, I will return to this issue in the context of the unfair dismissal claim.

Issue 8- Unfair Dismissal

318. Although much of the background has been set out above, it is necessary to go through matters in a little more detail.

319. Firstly, it is necessary to set out the dignity at work requests that the claimant presented.

320. On 19 October 2021, the claimant emailed MM, Director because she wished to let him know about an incident that he had witnessed and explain the situation from her perspective.

321. A meeting took place on 16 November 2021, the minutes are at page 628, and claimant said that she had felt bullied/harassed in a group that he was part of. It is not clear from the minutes what meeting was being referred to although it was described as being nine months ago and clearly related to an agenda item. I infer, therefore, that it was in relation to the meeting on 4 February 2021.

322. A dignity at work request was also raised with NN, Director. A meeting took place on 9 November 2021 and the notes are at page 626 of the bundle. As far as it is possible to tell issue being raised was the same. The claimant framed the issue in terms of race.

323. On 10 November 2021 NN wrote to WW stating that the process had really negatively impacted him over the past few weeks and caused significant anxiety. He did not believe that the issue should have been raised as a Dignity at Work issue and he was disappointed that HR had failed to prevent the unnecessary suffering.

324. On 19 October 2021, the claimant also raised a dignity at work conversation with SS, Director. He declined a meeting because of his wife's ill-health.

325. The claimant also raised, a dignity at work conversation with TT, Academic Registrar, about the same matter and a meeting took place on 6 December 2021.

326. The claimant raised a similar conversation with VV who, on 25 October 2021, wrote to JJ stating that he had found the email anxiety inducing as the email policy suggested he had been accused of bullying, which was not the case. (Page 468).

327. I have already referred to the fact that the claimant had also raised a dignity at work request in respect of the senior management team questioning the cost of her coaching (that being the request which led to the meeting with CC on 18 May 2021 and GG on 19 May 2021).

328. The claimant had raised a dignity at work request with BB on 8 October 2021 and with LL as set out above .

329. The claimant raised grievances as follows:

    1. on 19 October 2021 against DD which was treated as informal (page 461)

    2. on 22 October 2021 against BB (page 498).

3. on 16 November 2021 against CC (page 605)

4. on 25 January 2022 a formal grievance against DD because she had not supported her in respect of the conduct from BB.

330. As indicated, CC then raised a counter grievance against the claimant on 27 November 2021.

331. None of the grievances were upheld.

332. Whilst it is right to record that the majority of the dignity at work conversation requests related to the meeting in February 2021, it is also clear that several months later the claimant was refusing to let the matter drop and was seeking to bring a wide number of senior members of staff into her dispute with BB.

333. Thus, as GG says in his witness statement, between October and November 2021 the claimant had instigated three grievances and invoked the dignity at work policy against seven employees. Seven of the nine subjects of the claimant's actions were directors and GG says, and I find, that was absorbing considerable amounts of management time to deal with. He states that the sheer volume of processes and the quick escalation over a short period of time was a trigger for the Executive Leadership Team to determine that it was necessary to understand the reasons behind that. I accept that evidence. It was therefore decided to commission an independent report by a consultancy, B3sixty to investigate whether there were any institutional issues in respect of equality and diversity.

334. I find it was entirely to the respondent's credit that it was willing to engage such a consultancy prior to taking any action which might be detrimental to the claimant. The consultant reported on 23 December 2021 that it could not be established that the University faced unique institutional systemic issues and also that the claimant's use of the Dignity at Work Policy was neither legitimate nor appropriate (page 694).

335. The claimant had had time off due to ill-health leading up to January 2022 and, on 19 January 2022, a return to work meeting took place. According to AA, and I find, during the meeting the claimant asked whether she could not attend meetings where they would be attended by people against whom there were live grievances. AA pointed out that given the claimant's role as Project Manager it was necessary for her to have regular meetings with both DD and BB. The claimant was allowed to return to work on a phased return basis.

336. By March 2022 the formal grievance processes had come to an end and the claimant's grievances had not been upheld. AA had seen the report from B3sixty and decided that it was important to seek to address the issue of working relationships and the disruption to the University. I find that position

was a reasonable one for him to take and the only real option. Matters could not be allowed to continue to fester.

337. The respondent obtained an occupational health report from Dr [redacted] dated 18 March 2023. He stated that the underlying work-related problem remained unresolved and until resolution was found, he found it difficult to see how the situation was going to improve. He said that redeployment per se was not going to resolve the matter, but it may be that part of the attempt to resolve the situation for all parties might include redeployment.

338. AA invited the claimant to a meeting on 16 March 2024 to discuss how things might move forward. In that meeting the claimant was told that she should rigorously assess any proposed future use of an HR procedure to satisfy herself that it was legitimate and justified, it was noted that the claimant was under stress and that an occupational health report which had been obtained said that matters were unlikely to resolve until work issues had been resolved. AA asked the claimant what would enable her to move forward and she said she would give some thought that and it was agreed that a further meeting would take place. She was reminded of the need to work professionally and completely with colleagues.

339. A further meeting did take place on 9 May 2022. The meeting is recorded in AA witness statement, but it is useful to record what the claimant said about that meeting in cross examination. It was put to her that she wanted to go over the same ground and called BB a liar, she replied that it sounded like something she would say. It was put to her that she wanted nothing to do with DD and she replied that was fair. It was put her that she did not suggest any solution and she agreed that she did not know what the solution was.

340. The claimant was also asked, in cross examination, about an email sent on 30 June 2022 from Mr [redacted], who had taken over as Human Resources Director from WW. He wrote that there was not a healthy working environment for anyone and the claimant agreed with that. The claimant also agreed that it was sensible to have an investigation to see if matters could be moved forward (which is something which had been suggested by Mr [redacted] in that email).

341. AA says and I accept, that he was growing increasingly concerned about the relationship between the claimant and DD. He says, in his witness statement, that during weekly catch-up meetings with DD in April and May 2022, she had been very distressed about her working relationship with the claimant. She had mentioned having significant stress and anxiety as a result of what she felt was the claimant not being willing to be managed by her and she felt that she was now being bullied by the claimant. He wrote to DD with his understanding of events and on 30 June 2022 she replied

stating “I do feel that there has been a significant break down of the relationship between YR and myself and I find it increasingly difficult, if not impossible to undertake the duties that are expected of me as a line manager. I am very concerned for YR’s wellbeing, but I am also concerned about the impact upon my own physical and mental health” (page 1007). I accept that email as being an accurate statement of how DD felt. Having observed her give evidence and considered her emails, it seems to me that she is of a relatively mild disposition and is somebody who would rather find consensus than conflict. I have no doubt that she would have found managing the claimant difficult.

342. AA’ way forward was to commission a report from FF. She conducted an investigation and produced a report on 16 September 2022 which is at page 1093. I have set out some extracts from the report above. She interviewed the claimant and five other individuals and set out in clear detail why she did not regard the working relationship between the claimant, DD, BB and CC to be redeemable. Her report included the statement “The impact on the breakdown of working relationships between [the claimant] and [DD], [BB], and [CC] was clearly evident in the interviews during which [the claimant], DD and BB in particular were very distressed. Though it is not unusual for people to feel and express stress when engaging with HR processes, it was clear that for these four people, reflecting upon and talking about the working relationships in question was both painful and distressing. The claimant, DD and BB all cried during their meetings and CC was very emotional.”

343. FF also concluded that the working relationships had soured to the point where there was an inevitable impact on the operation of the University and the relationships were beyond effective intervention and repair. Mediation was very unlikely to be productive.

344. The claimant was then invited to a meeting on 6 October 2022. It was to be chaired by GG. The claimant was invited by letter dated 22 September 2022 which enclosed the report of FF. AA, the writer of the letter, stated that he had determined it would be appropriate to conduct a formal meeting to give consideration to how best the concerns noted in the report could be resolved. The outcomes may include mediation, change in line management and/or redeployment or the termination of the claimant’s employment. The claimant was given the right to be accompanied.

345. The meeting then took place and the claimant was given the opportunity to put forward her representations. She did not attend with a representative, informing GG that she was in dispute with her trade union. The meeting notes are lengthy. The meeting commenced with FF appearing in order to present her report. FF stated that she felt that mediation was no longer a viable option because there had been such a breakdown of trust to the extent that there was fear of the claimant. The claimant noted that she was

willing to work with colleagues but not to exchange pleasantries. The claimant stated that she was not interested in mediated conversations with BB and CC. The claimant indicated an interest in the Head of Operations role in Research & Innovation which was being advertised. Change of line management was discussed and the claimant felt that people would not want to work with her. After an adjournment the meeting concluded without a resolution and it was agreed that the claimant would be given five day's special leave to allow her to provide a written response to FF's report and articulate what positions she felt she could be redeployed to (amongst other things).

346. The claimant put in written observations following FF's report including her agreement that working relationships had irreparably broken down and her view that colleagues expressed fear of her was because of "white fragility" (page 1112).

347. The meeting reconvened on 13 October 2022. Again, the claimant proceeded without representation and the claimant was told that she could ask questions of FF if she wished to do so. Discussions took place about a change in line management and redeployment and, in particular, about the Head of Operations in Research & Innovation role. The claimant said that her relationship with DD was irreparable and noted in respect of DD ""the ball is in [DD's] court so if she wants everyone to be screwing her…". The claimant's special leave was extended to 18 October 2022, when it was anticipated that a further meeting would take place.

348. After the meeting GG made enquiries of AA as per the email at page 1130. AA said that it was his belief that the breakdown of working relationships between the claimant and her other colleagues had significantly contributed to the delay in the Hub project and he explained the three main quantifiable impacts of the delay, including that the delay had hindered key improvements identified as needing to be made to address areas of poor student experience, that there had been an erosion of goodwill and progress in coalescing various teams around a common aim and the delay had caused significant cost in terms of time and resources to the University. On 21 October 2022 those comments were forwarded to the claimant for her consideration and she replied on 24 October 2022 saying that they seemed fair (page 1136).

349. GG also raised questions of FF to which she replied on 13 October 2022 and he sent those replies to the claimant for her comment on 21 October 2022 (page 1133). The claimant replied to thank GG on 24 October 2022.

350. GG further acquainted himself with a number of documents including the grievance documents relating to BB, the claimant's job description as well as a job description for the Head of Operations role, I accept that he had considered the documents set out in paragraph 72 of his witness statement.

351. GG found that there was a clear and irreparable breakdown of relationships, he considered the allegations of race discrimination and found them to be unfounded. He concluded that mediation was not a viable way forward, he considered a change in the line management within Student Support and Success but because DD was the Director of that Service, even a change of immediate line manager would not assist matters because the claimant would still be required to work in close conjunction with DD.

352. GG then considered redeployment. He decided that that was not a viable way forward for three reasons (although the third reason further breaks down into three reasons). In summary they were

    1. the scale of the breakdown of relationships across the University, including with senior members of staff who had strategic responsibilities,

    2. the impact of the breakdown on the individuals involved and the failure by the claimant to express any concern for the impact on the named individuals,

    3. the business impact of the breakdown, in particular;

        i. the inability of DD to progress the restructure of the Student Support and Success given the breakdown of the relationships

        ii. the documented lack of willingness by colleagues beyond the claimant's immediate sphere to work on common projects.

        iii. the contribution of the breakdown in relationships to the severe delay to the Enquiries Hub.

353. GG, in his witness statement, explains that he considered the viability of moving the employment of those with whom the claimant had suffered the breakdown of relationships but given the number of colleagues involved, he took the view that was not a viable way forward.

354. GG determined that the only way forward was to terminate the claimant's relationship.

355. One of the claimant's complaints about GG is that in the meeting on 6 October 2022 she complained to him about a sexual misconduct incident which the outcome letter did not take into account (see the claimant's grounds of appeal against dismissal at page 1164). The minutes of the meeting of 6 October 2022 record the claimant stating that sexual misconduct issues are not always successfully dealt with. It is apparent from page 1107 that she is talking about the meeting between her and CC and GG in May 2021.

356. In his evidence, GG accepted that the claimant had raised that matter but said that his focus was on the current state of the working relationships not on historic matters. He also stated, however, that he had no recollection that an allegation of sexual misconduct was being made about him. He did not accept that is what the minutes of the meeting at 1107 show. I find the minutes do not show the claimant was making allegation of sexual misconduct to do with GG and I find that she did not do so.

357. Much of the above information which I have recited has come from GG's witness statement or the contemporaneous documents. I accept the accuracy of that information and find as facts those things which I have set out above. In making those findings, I have considered whether GG was motivated (even subconsciously) by the claimant's race, disability or sex or whether, for any other reason, the steps that he took were because of the claimant's race, disability or sex.

358. I have accepted GG's evidence because he was able to give clear and detailed explanations for the decisions that he took. There is no evidence from which I could conclude that those decisions were tainted by matters of discrimination. He had considered matters very carefully, he was not acting in a reactionary fashion, he was trying to deal with a difficult situation which was before him. The respondent had gone to significant lengths to ensure that the claimant had the benefit of a fair process in this matter. It commissioned the B3sixty report to ensure that there were no institutional risks and then commissioned the report by FF. The claimant does not suggest that the FF was discriminating against her on the grounds of her race, disability or sex (although as set out above she does complain that comments made to FF were discriminatory). There was contemporaneous evidence of those matters which GG took into account in reaching his decision.

359. It is right to say that in reaching his decision GG decided that redeployment would not be an option. In that way, he did prevent the claimant from being redeployed to the Head of Operations role. To that extent, he prevented the claimant from applying for that role in the normal process (he would not have been the appointing manager). However, that was entirely reasonable in the circumstances which arose. Deciding whether the claimant could be redeployed was an integral part of the decision-making process in deciding whether or not to terminate the claimant's employment, matters had reached the point where that question could not simply be left to whether or not the claimant was successful in obtaining an appointment to a different role in the University. The reasons which GG advances for deciding that redeployment was not an option are sound and, again, there are no facts from which I could conclude that his decision was because of the claimant's race or sex or disability.

360. Overall, there are no facts from which I could conclude that the decision to dismiss the claimant was because of her race or her sex or disability. I find the decision to dismiss was because of the breakdown in relationships between the claimant and her colleagues and for that reason only.

361. I am also satisfied that the reason for the dismissal was the breakdown in relationships, not that GG believed that the claimant was guilty of misconduct. This was, therefore, a dismissal for "some other substantial reason".

362. The claimant was sent a letter of dismissal on 27 October 2022 which set out in detail the conclusions of GG and give the claimant a right of appeal (page 1153). The claimant appealed on 10 November 2022 (page 1161) setting out a number of grounds of appeal.

363. The appeal was heard by HH, Chief Operating Officer of the respondent and his witness statement sets out the steps he took in respect of the appeal. Having considered the outcome letter and the grounds of appeal he met with the claimant on 21 November 2022, the minutes of which I have seen. I accept that the meeting took more than three hours, and the claimant was given the opportunity to make any representations that she wanted to.

364. Following the meeting HH carried out further enquiries into the points which the claimant had raised and, having done so, he concluded that the decision of GG was one which could have been made by him based on the evidence he had before him and that GG had given full consideration to the alternatives and provided reasons as to why they were discounted. He concluded that there was no evidence to indicate that the decision of GG should not have been made or should have been different.

365. The claimant's witness statement does not make any complaint about the appeal process.

366. In cross-examination of HH the claimant made a number of points about the appeal. She put to HH that there was an issue with the process because she had spoken to GG about his misconduct towards her. I infer from that, that the procedural issue was that GG should not, in those circumstances, have continued to deal with the dismissal process. HH stated that he did not recall the point being raised in that way. Having considered the grounds of appeal, I find that the point was not put that way in the written grounds of appeal. At page 1164 – 1165 the claimant writes that the outcome letter had not taken into account the fact that the claimant reported a sexual misconduct incident to the person investigating the complaint. It does not say that the complaint was about GG and it does not say that it was a procedural failing for him to continue progressing the matter.

367. The claimant referred to pages 1196 – 1197, being the minutes of the meeting on 21 November 2022 but, again, that does not suggest that a

complaint was made against GG or that it was inappropriate for him to carry on with the process.

368. In cross-examination the claimant went on to say that it was unnecessary and unfair for her to be asked to attend three meetings on campus in the lead up to the decision to dismiss. HH did not agree that that was unfair or with the claimant's suggestion that the decision to dismiss was always predetermined. It was put to him by the claimant that "everyone wanted to get rid of the "black whore" which he denied.

369. In my judgment the appeal process was detailed and thorough. When the claimant had raised things in the appeal meeting which required further consideration, HH pursued those points. His outcome letter was extremely detailed and addressed the points raised.

370. The claimant has not pointed to any procedural deficiencies on the part of the respondent apart from the suggestion that GG should not have made the decision to dismiss the claimant because she accused him of misconduct (which I find to be incorrect) and I find that the respondent did all that it needed to do procedurally. It made the claimant aware of the fact that it was considering terminating her contract and the reasons for it. It provided the claimant with the relevant evidence. It gave the claimant the opportunity to comment on that evidence at a meeting. The claimant was entitled to be represented at that meeting. It gave the claimant the opportunity to appeal and carried out that appeal carefully.

371. Although the respondent is a small university, I regard it as being a large employer. Nevertheless, I find that it had done all that could reasonably be expected of it in the circumstances.

372. In deciding whether the decision to dismiss was fair, I have considered whether the issues with the dignity at work policy that I have referred to mean that I should conclude the decision was unfair. I do not think that I should. The problems that I have set out with the dignity at work policy mainly relate to how people who are complained against would feel and to its likely effect of increasing rather than decreasing workplace tension. However, there was no compulsion on the claimant to raise dignity at work requests in respect of her colleagues, that was her choice and although the number of requests for conversations that the claimant was making was the initial concern in this case, the breakdown in relationships went far beyond that. I am willing to accept that the breakdown in relationships between the claimant and her colleagues was not all the fault of the claimant. It is very rare in any dispute that one person is wholly right or wholly wrong. However, it is also not the case that an employer can only dismiss those who are morally culpable. The law allows employers to take steps to resolve workplace disputes where there has been a breakdown of relationships. That is what the respondent did here and it is impossible for me to say that

the decision taken by the respondent was outside the range of reasonable responses.

373. Taking all of those matters together and using the words of section 98(4) Employment Rights Act 1996, I find that having regard to the size and administrative resources of the respondent, it acted reasonably in treating the breakdown of relationships between the claimant and her colleagues as a sufficient reason for dismissing the claimant. In all the circumstances of the case of the dismissal was fair, and certainly within the range of reasonable responses.

374. I return then to the issues which I have left open above.

375. **In respect of issue 3.1.21**, whilst the respondent did refuse to deploy the claimant into the Head of Operations role, I am entirely satisfied that it was not because of race, it was because of those matters which GG considered and I have set out above.

376. **In respect of issue 3.1.22,** as I have set out above, I am entirely satisfied that the decision to terminate the claimant's contract of employment was in no sense whatsoever to do with race, it was because of GG's view that it was the only way to deal with the poor working relationship between the claimant and a number of her colleagues.

377. **In respect of issue 5.1.3** again for the reasons I have given, the failure for the claimant to be appointed to the Head of Operations role was not because of disability but because of those matters which I have set out above which led GG to conclude that redeployment would not work. It is inaccurate to say that the claimant did not get feedback on her application, the letter of dismissal from GG set out quite clearly why the claimant was not being redeployed to the Head of Operations role (page 1152).

378. **In respect of issue 5.1.4,** for the reasons I have given I am satisfied that the decision to dismiss the claimant was in no sense whatsoever to do with her disability.

Taking a Step Back

379. I must remain alive to the possibility that whilst individual actions might not be shown to be discriminatory on the grounds of race, sex or disability, taken cumulatively they might do so. It is possible to spend so much time focusing on the individual allegations that one misses the bigger picture.

380. I do not find that is the case here. In my judgment the overall picture is one where the claimant has, in a new role as Project Manager, been offended by robust discussions and emails which were a normal part of discussions among senior staff. They were not tainted by discrimination. In that context the claimant was difficult to manage because she was unwilling

to accept that she could be directed to do things which she did not think were sensible. She believed that her role carried more authority than it did. The claimant has taken offence at a number of other things where it was not reasonable for her to do. That view is reinforced by the number of different people who the claimant complains about; this is not a case where one or two people are, in the opinion of the claimant, being motivated by discrimination, on the claimant's case a reasonably large number of people are and yet, as I have set out, there is no evidence that any of them were so motivated. The breakdown of the claimant's relationships with others was not because of her race (or sex or disability) and nor was her dismissal. The bigger picture does not show that the claimant was being discriminated against because of race, or sex or disability, indeed it shows the opposite.

381. I turn then to the claim of failure to make reasonable adjustments.

Issue 6 – Failure to make reasonable adjustments.

382. In an attempt to add clarity to this judgment I will deal with the question of each alleged PCP/physical feature of the premises separately and at the same time address the questions of whether they put the claimant at a substantial disadvantage, whether the respondent knew or could reasonably have been expected to know that the claimant was disabled and at that disadvantage and whether there were steps which could have been taken to avoid the disadvantage.

6.1- The claimant relies upon the following PCPs

Issue 6.1.1 The requirement for the Claimant to work with colleagues (BB, CC and DD) without the support in place offered by HH in the grievance letter dated 21 December 2021 until her dismissal on 27 October 2022

383. There is no doubt that the claimant was required to be employed alongside BB, CC and DD up to her dismissal on 27 October 2022. It is also clear that the paths of all four people crossed from time to time, even after the end of the claimant's engagement as project manager in February 2022.

384. In HH's letter of 27th of October 2022 he wrote "In recognising that there is a need to improve the effectiveness of your working relationship with [BB], the panel would like to offer you the opportunity to discuss in person how an improved relationship may be achieved to help and support you in your role going forwards. Please let me know by 14 January 2022 whether you would be happy to meet to talk through these aspects with us and we will organise a meeting in the new year." (page 765)

385. The claimant replied on 13 January 2022 stating, "I would like some further information on what the panel suggests, please" (page 781) but according to the witness statement of HH he was then informed by WW, director of HR, that there were other ongoing internal processes which

would impact on any discussion that the claimant could have about her relationship with BB going forward. Specifically, by that time the claimant had raised a grievance against DD, the subject matter of which was the conduct of BB towards the claimant which undermined her dignity at work.

386. On 9 February 2022, WW wrote to the claimant stating that HH's offer to talk through with the panel how relationships with BB had been affected, had been paused whilst the grievance in relation to DD was being resolved but that the offer was now open again and the claimant could contact RR to arrange a meeting (page 880).

387. In her evidence, the claimant said that she had attempted to take that offer up by talking to RR in a committee meeting. She said that she walked into the boardroom and caught the eye of RR and they had a quiet conversation by the table about it.

388. I am not satisfied that the claimant's version of events is accurate. The last email which the claimant sent was on 13 January 2022 when she was asking for further information on what the panel suggested. That further information had not been supplied to her. It seems unlikely to me that the claimant would move from a position of wanting more information to having a conversation with RR at the edges of a committee meeting where she said that she wanted such a meeting. I would have expected her either to repeat her request for more information as to what the panel suggested or send an email saying that she wanted a meeting.

389. I find on the balance of probabilities that the claimant did not follow up the email of 9 February 2022.

390. In those circumstances there was no PCP that the claimant had to work with colleagues without the support offered by HH, except for a brief period between 13 January 2022 and 9 February 2022.

391. I do not consider that brief period placed the claimant at a substantial disadvantage compared to non-disabled people. The claimant had not chased up her email of 13 January 2022 and, when WW emailed her on 9 February 2022, she did not pursue matters then. I consider if the claimant had been at a substantial disadvantage because she had not had that meeting with the grievance panel, she would have pursued the matter after 13 January 2022.

392. In those circumstances there was no requirement for the respondent to take any steps.

Issue 6.1.2- The requirement for the Claimant to work without requested mediation from February 2021 to 27 October 2022.

393. The claimant requested a facilitated conversation with DD, BB and CC on 18 May 2022 (pages 973, 977 and 972). On 25 May 2022, WW replied stating:

> "I have received three requests from you to arrange HR facilitated meetings with [DD], [CC] and [BB] respectively. I note that all three are staff whom you took out grievances against last year. In the two meetings which AA and I have held with you over recent weeks we have made it very clear to you that these procedures are exhausted. What you are now requesting appears to be seeking another route to reopen the issues you have with these colleagues, when the University has concluded through due process that your complaints are not well founded. Accordingly, I can advise that these meetings will not be arranged." (Page 992).

394. The claimant says that by "facilitated conversation" she meant mediation. The respondent says that the claimant was simply seeking another route to reopen the issues that she had already raised with her colleagues. I am prepared to accept, without deciding, that the claimant was seeking mediation at that stage.

395. In those circumstances I find that there was a requirement for the claimant to work without mediation from 18 May 2022 until October 2022. I am not satisfied, however, that there was a PCP that the respondent would not provide mediation prior to May 2022. The claimant's witness statement gives no details of when she sought mediation and the claimant's second particulars of claim state that she requested mediation and redeployment in spring 2022 (page 86). I find that there was no request for mediation until this request in May 2022.

396. The question of whether the claimant was placed at a substantial disadvantage because of the PCP requires consideration of whether or not the claimant's stress and anxiety at work were made worse because of the poor working relationships.

397. I consider it more likely than not that they were made worse and so the claimant was placed at a disadvantage compared to nondisabled people.

398. I also find that the respondent had knowledge both of the claimant's workplace stress and the effect the claimant's relationship with her colleagues was likely to have on her.

399. The final question is, then, what steps could have been taken to avoid the disadvantage. The only steps which could have been taken were to insist on mediation. However, I have set out above, that by March 2022 and

certainly by May 2022, relationships with the claimant's colleagues were at a low point. I am satisfied on the balance of probabilities that had the question of mediation been considered at that point, the answer would have been the same as was given by FF in September 2022, namely that mediated conversations were very unlikely to be productive. My findings of fact go further. I consider that WW was correct that the claimant would have simply wanted to seek another route to reopen the issues which had gone before. Mediation is likely to have been harmful to the relationships with DD, CC and BB. Mediation would not have reduced the claimant's distress or workplace stress.

400. Mediation would not, therefore, have been a reasonable step. There was no failure by the respondent to take a reasonable step.

Issue 6.1.3 - The requirement for the Claimant to work with colleagues (BB**, CC and DD) without redeployment from 18 March 2022 to 27 October 2022.**

401. On 16 February 2022 the claimant asked if there were other roles available so that she could remove herself from "the situation". WW replied to state "I can only suggest that you regularly check the Universities job vacancy pages to see if any role becomes available which you consider might be suitable for you to apply for." (Page 878)

402. In her evidence the claimant accepted that there would need to be a vacancy for her to be redeployed, that vacancies were published and that she would be best placed to know what was suitable for her.

403. The claimant says that she applied for the Head of Marketing role and the Director of Policy and Projects role. I have dealt with the latter role above, there is no evidence that there was any PCP that the claimant could not be redeployed, she was simply unsuccessful in her application. The claimant has not adduced any evidence in relation to the Head of Marketing role and only refers to it in passing at paragraph 129 of her witness statement. In cross-examination she accepted that at the time she spoke to II about the Head of Marketing role the recruitment process was underway and she told him that she respected that and asked him to consider if he thought she was a more suitable candidate. Thus, it appears that the claimant did not apply for that role.

404. There is no evidence that the claimant was being prevented from being redeployed or that the respondent had a provision, criterion, or practice to that effect. The highest which the evidence goes is that when the respondent was considering dismissing the claimant, it decided that redeployment was not possible. However, until that point, I do not consider there was any PCP as the claimant alleges.

405. At the point of GG refusing to redeploy the claimant to the Head of Operations role he was not applying a PCP, he was simply making a

decision that redeployment was not appropriate. Even if he was applying a PCP and that PCP put the claimant at a disadvantage because of her disability, it would not have been a reasonable step to redeploy the claimant. The decision to dismiss the claimant was reasonable and redeployment was not a viable option.

406. There was no failure by the respondent to take reasonable steps in this regard.

Issue 6.1.4 The requirement for the Claimant to attend three formal meetings on campus to discuss the breakdown in the working relationship between herself and her colleagues on 6 October, 13 October and 27 October 2022.

407. There is no doubt that the claimant was asked to attend meetings on 6, 13 and 27 October 2022. However, that does not automatically mean that there was a provision, criterion or practice that she had to attend. The claimant never suggested to the respondent that she could not attend or that she would prefer to attend by telephone or by video.

408. The claimant accepts that she never said to anybody that it would be difficult for her to attend the meeting and I do not find that the respondent had a provision criterion or practice that the claimant had to attend meetings on campus.

409. Even if there was a PCP to that effect, there is no basis for finding that the respondent knew or ought to have known that the claimant was put at a disadvantage by it and I find that the respondent did not know of any such disadvantage. (I have made no decision whether, as a matter of fact, the claimant was put at a disadvantage by being asked to attend campus).

Issue 6.2- Physical Feature of the respondent's Premises

Issue 6.2.1- A seated desk which the Claimant was required to use from September 2021 to August 2022.

410. It is accepted that that a seated desk was a physical feature of the respondent's premises. Moreover, if the desk was unacceptable for the claimant, she would be able to argue that she should have been provided with a different desk as an auxiliary aid. I analyse the issue in those terms.

411. An assessment was carried out by Posturite on 13 September 2021. It recorded that the claimant's desk was acceptable (page 416). There was an issue with the height of the claimant's screen but that was due to her glasses being varifocals (page 416 and 418). In its recommendations, the report suggested only that if the claimant continued to have problems following other alterations to her workstation, enquiries should be made about the possibility of a sit/stand desk. The other alterations were not performed, in part because the claimant's chair was not altered and in part because the claimant never obtained glasses for VDU work.

412. I do not find the desk was unsuitable for the claimant and, therefore, it did not put her at a disadvantage compared to nondisabled people. Moreover it is not the case that, but for the provision of an auxiliary aid (being a different desk) the claimant was being put at a substantial disadvantage.

Issue 6.2.2- A chair without a headrest for the period which the Claimant was required to use from September 2021 to August 2022.

413. The Posturite report recorded that the chair which the claimant was using was not suitable because it was not supporting her neck and shoulders and she felt that she was sliding off the chair. She was not able to adjust the seat tilt function. It was recommended that the claimant be provided with a different chair.

414. A new chair was not provided for the claimant, she was provided with a headrest in August 2022.

415. I was told by EE that the problem was not the chair, it was where the claimant had her screens because of using varifocals, I reject that evidence in favour of the evidence from Posturite. I do so, in part, because of the lack of any contemporaneous notes taken by EE and in part because I am not satisfied that she has the same levels of expertise as the author of the Posturite report. If she was concluding that the report was wrong, I would have expected her to record in some detail her reasons for departing from it.

416. I find that it is more likely than not the claimant's chair would put her at a disadvantage compared to non-disabled people. Non-disabled people would be able to cope with an inadequate chair more than somebody with a neck and arm impairment.

417. It is obvious that the respondent knew or ought to have known that the claimant was put at the disadvantage because of the report from Posturite.

418. That leaves, then, the question of whether steps could have been taken to avoid the disadvantage caused by the poor chair. The obvious step would be to replace the chair. However, EE says that the claimant insisted that she keep the chair that she already had. Regrettably, there are no notes to that effect, indeed the record keeping around this part of the respondent's processes is practically non-existent.

419. However, when it was put to the claimant that she wanted to keep the chair she said that she did not really remember.

420. The claimant did send an email dated 13 May 2022 when she stated "I still have pains down my arm, neck and upper spine, and frequently must stretch out the discomfort. My request for workstation adaptations seems to be "stuck" somewhere and am currently using makeshift adaptations. Could

you chase this up for me please?" (Page 965). There is no record of any reply being sent to that email although EE said that her assistant would have sent one.

421. Although I consider the record keeping of the respondent to be lamentable in this respect, I do not think that EE adopted a careless attitude. Her evidence was that on a number of occasions she went over to see the claimant to check up on her office set up. The claimant's evidence substantiated that. The claimant agreed that EE had visited on one occasion, when the claimant was on the telephone. The claimant also accepted that it is possible that on another occasion when EE came, she was using a meeting chair at her desk (she said on the advice of a physiotherapist). Thus, I accept that EE was taking the claimant's situation seriously.

422. If the claimant was advancing a positive case that she did not wish to keep her chair, then I may have preferred her version of events given the lack of records on the part of the respondent. But when I am faced with EE telling me that she recalls the claimant wanting to keep her old chair and the claimant simply saying that she cannot remember, the position is somewhat different. As I have indicated, I find that EE was adopting a proactive approach to solving the claimant's issues. It seems to me that if the claimant genuinely thought she was being deprived of a new chair over a period of several months, she would remember that fact. Her email of 13 May 2022 does not refer to a chair but simply workstation adaptations. That phrase is wide enough to include a chair but does not necessarily do so.

423. Having analysed the evidence on this point as closely as I can, I have concluded that I should accept the evidence of EE. In those circumstances, if the claimant did not want a new chair and the respondent was willing to provide her with one, as I find it was, the respondent did not fail to take such steps as were reasonable to avoid the disadvantage. The claimant did not want the chair which would avoid the disadvantage in question.

Issue 6.7- Suggested Steps

424. Although I have dealt with reasonable steps within the paragraphs above, issue 6.7 suggest some specific steps which might not be directed to any particular PCP or physical feature of the respondent's premises. The purposes of completeness I will, therefore, address all of them in turn.

1. For the reasons I have given it would not have been reasonable to redeploy the claimant to a qualifying role at the point when the respondent was deciding whether to dismiss her or not. There was no PCP to which such a step would apply before that point.

2. The suggestion that the respondent should have expedited the implementation of extra support to staff and students with disabilities

for self – service policy processes such as IT account recovery does not, it seems to me, go to any of the PCPs set out above. And the claimant did not suggest that it did.

3. The step of allowing the claimant to attend meetings by video or telephone when possible was not necessary because there was no PCP that the claimant could not do so.

4. The step of facilitating mediation was not appropriate from the point when the claimant sought to attend mediation or the reasons I have given.

5. It was not reasonable to provide the claimant with a writing desk since there was nothing wrong with the desk that she had. It would have been a reasonable step to provide the claimant with an ergonomic chair if she had not declined one. But the respondent took such steps as were reasonable steps in offering the claimant a new chair.

Issue 7.1.1 The Claimant was dismissed on 27 October 2022 and because she is female, GG felt that he, due to sexual stereotype, could act in this way towards the Claimant.

425. There is no doubt that the claimant was dismissed and that was to her detriment. However, for the reasons I have given, I am entirely satisfied that a man in the same position as the claimant would have been dismissed for the same reasons that the claimant was dismissed.

Conclusions

426. In respect of the race discrimination claim;

1. the claims in respect of issues 3.1.1, 3.1.2, 3.1.6, 3.1.7, 3.1.9 3.1.10, 3.1.11, 3.1.12 3.1.13, 3.1.14, 3.1.16, 3.1.17, 3.1.19 fail because the claimant has not satisfied me that she was subjected to any behaviour which falls within section 39 Equality Act 2010.

2. further, or alternatively, the claims in respect of issues 3.1.1, 3.1.2 3.1.3, 3.1.4, 3.1.5, 3.1.7. 3.1.8, 3.1.9, 3.1.10, 3.1.12, 3.1.13, 3.1.15, 3.1.16, 3.1.17, 3.1.18, 3.1.19, 3.1.20, 3.1.21, 3.1.22 fail because there are no facts from which I could conclude that the claimant was treated unfavourably because of race. In respect of many of those issues I am, further, satisfied that the respondent's actions and those of its employees, were not because of the claimant's race.

427. In respect of the direct disability discrimination claim:

1. The claimant was disabled at the material times by reason of work-related stress, post-traumatic stress, anxiety and depression and by neck pain or arm pain.

2. The claims in respect of issues 5.1.2, 5.1.3, and 5.1.4, fail because there are no facts from which I could conclude that the claimant was treated unfavourably because of disability and, in any event, I am satisfied that the respondent's actions and those of its employees, were not because of the claimant's disability.

428. In respect of the claim for reasonable adjustments:

1. the claim in respect of issue 6.1.1, fails because the claimant was not placed at a substantial disadvantage by the PCP,

2. the claim in respect of issue 6.1.2 fails because mediation would not have been a reasonable step,

3. the claim in respect of issue 6.1.3 fails because there was no PCP as alleged.

4. the claim in respect of issue 6.1.4 fails because there was no PCP as alleged and, further, the respondent would not have known of any disadvantage to the claimant if there was one,

5. the claim in respect of 6.2.1 fails because the seated desk which the claimant was required to use did not put her to disadvantage compared to nondisabled people,

6. the claim in respect of issue 6.2.2 fails because replacing the claimant's chair would not have been a reasonable step in circumstances where the claimant said she did not want a different chair.

429. In respect of the claim of direct sex discrimination

1. the claim in respect of issue 7.1.1 fails because I am entirely satisfied that a man in the same position as the claimant would have been treated in the same way as the claimant.

430. In respect of the claim of unfair dismissal, the sole reason for the claimant's dismissal was some other substantial reason, namely the breakdown of a relationship between her and her colleagues, the procedure followed by the respondent was fair and the decision to dismiss was well within the range of reasonable responses. In those circumstances that claim fails.

431. Having reached those conclusions, it is not necessary for me to address issues and whether the claims are in time or not.

Concluding Remarks

432. Notwithstanding the conclusions which I have reached and acknowledging that the claimant will, at best, be disappointed by those conclusions, I acknowledge the strength of feeling which she clearly has about the case and further acknowledge her tenacity in presenting her claim in personal circumstances which were clearly difficult for her. I wish her the best in her future.

433. I also acknowledge the strain which this case evidently put on at least some of the respondent's witnesses. With a considerable degree of stoicism, they sat through a lengthy and difficult hearing, as I have described to some extent at the outset of this judgment. I, too, wish them the best for their future.

434. Finally, I express my gratitude for the amount of work carried out by and care taken by Ms Palmer in presenting the case on behalf of the respondent and her instructing solicitors who, amongst other things, provided an admirably accessible bundle, especially the electronic format. I was greatly assisted by the cast lists, chronologies and written submissions of Ms Palmer.

Employment Judge Dawson

Date 3 December 2024

JUDGMENT SENT TO THE PARTIES ON
09 December 2024

FOR THE TRIBUNAL OFFICE

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

Appeal

You can appeal to the Employment Appeal Tribunal in some circumstances. Strict time limits apply. There is more information here: https://www.gov.uk/appeal-employment-appeal-tribunal

APPENDIX- LIST OF ISSUES

1 Claimant's claims

1.1 Direct discrimination based on race (section 13 Equality Act 2010)

1.2 Direct discrimination based on disability (section 13 Equality Act 2010)

1.3 Failure to make reasonable adjustments (section 20 and 21 Equality Act 2010)

1.4 Direct discrimination based on sex (section 13 Equality Act 2010)

1.5 Unfair dismissal (section 98 Employment Rights Act 1996)

2 Jurisdiction

2.1 The Respondent contends that in relation to the First Claim, any allegation relied on that occurred before 1 March 2022 is out of time and in relation to the Second Claim, any allegation relied on that occurred before 6 August 2022 is out of time.

2.2 Were the discrimination complaints brought within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

2.2.1 Was the claim made to the Tribunal within three months (plus any early conciliation extension) of the act to which the complaint relates?

2.2.2 If not, was there conduct extending over a period?

2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

(i) Why were the complaints not made to the Tribunal in time?

(ii) In any event, is it just and equitable in all the circumstances to extend time?

2.2.5 The Respondent accepts that the Claimant's claim for unfair dismissal was brought within the time limits set out in section 111 of the Employment Rights Act 1996.

3 Direct discrimination based on race

3.1 The Tribunal will decide whether the Respondent subject the Claimant to the treatment the Claimant alleges, namely:

3.1.1 On 9 January 2021 did BB, Director of [redacted], seed doubt about the Claimant's project management ability to the senior sponsor of the Enquiries Hub Project on which the Claimant was project manager by providing the project sponsor with misinformation on a discussion that took place in a meeting arranged by the Claimant?

3.1.2 On 4 February 2021 did BB shout down the Claimant in a project meeting attended by project board members? See also 3.4.1 below.

3.1.3 On 10 February 2021 did BB belittle the Claimant's position in a group email to project board members? See also 3.4.1 below.

3.1.4 On 10 February 2021 did BB refuse to attend the meeting requested by the Claimant if any of the agenda items raised by the Claimant were allowed? See also 3.4.1 below.

3.1.5 On 10 February 2021 did BB imply that her own project management experience exceeded that of the Claimant to seed doubt on the Claimant's abilities, and professional guidance, to project board members? See also 3.4.1 below.

3.1.6 On 27 April 2021 did CC table a paper at the Respondent's Race Equality Action Group which provided data on the Respondent's recruitment across ethnicity characteristics in which the Claimant could be identified? The Claimant alleges that the data showed one BAME application for senior management roles in that year which was her application.

3.1.7 On 30 April 2021 did DD acknowledge that she had created a separate project workspace to the one the Claimant had already built and had set up a private discussion area for herself, BB and II, Director of Communications and External Relations, on a project that the Claimant was the project manager?

3.1.8 Between April and May 2021 did BB exclude the Claimant from the tender process for the Enquiries Hub project workstream 1 (Artificial Intelligence) tool that BB was leading on by refusing the Claimant's request to be included in meetings and discussions and by participating in private groups on Teams and email chain?

3.1.9 On 18 May 2021 did CC meet with the Claimant ahead of a Dignity at Work conversation scheduled with GG on 19 May 2021 and deliberately groom the Claimant on what to say and what not to say at the 19 May 2021 meeting?

3.1.10 At the same meeting on 18 May 2021 did CC imply sexual misconduct by the Claimant towards AA?

3.1.11 On 19 May 2021 during a dignity at work meeting with GG and CC did the Respondent choose to distract from the conversation about race equality by deliberately overlaying an unexpected sexual misconduct implication towards the Claimant?

3.1.12 By 23 August 2021 did BB fail to complete a project critical milestone(s) set by the Claimant?

3.1.13 On 30 September 2021 did BB talk down to the Claimant and assert her superiority over the Claimant? The Claimant alleges that she enquired if the roadmap for the IT Directorate's implementations could flex to delay the launch of the digital workstream so that issues could be resolved and that BB appeared annoyed, raised her voice and used belittling words to the effect of "I am the Director of IT, know your place".

3.1.14 Did DD watch the incident referred to at 3.1.13 take place?

3.1.15 On 8 October 2021, did BB berate the Claimant in front of another member of staff (OO) and students in a café space on campus and repeatedly tell the Claimant to "go away" and "do not interrupt me" when the Claimant approached her to let her know there was a significant error with the platform that had been launched for the Enquires Hub Project? See also 3.4.1 below.

3.1.16 On 26 October 2021 did CC sent the Claimant a harassing and gaslighting email regarding the Dignity at Work conversation requested by the Claimant regarding the fact that the Claimant felt excluded from the working party on sexual harassment? The Claimant alleges that CC responded to the Claimant directly, rather than through the HR mediation provision in the policy. CC refuted the existence of a working party on sexual harassment, using litigious phrases which were beyond the Claimant's understanding, including "working relationships issue". The existence of the working party on sexual harassment was evidenced in the pursuant formal grievance against the Claimant, escalated to by CC. The Claimant alleges that CC referenced information that she was party to from a grievance matter on racism and working relationships brought by the Claimant in 2020.

3.1.17 On 9 February 2022 was the Respondent's Programme Evaluation Policy approved at its [redacted] Committee without the Claimant's contributions and perspective credited? The Claimant alleges credit was afforded to QQ, Head of Technology and Enhanced Learning, a white male. See also 3.4.2 below.

3.1.18 From 17 October 2021 to 2 March 2022 was there a delay in organising the Claimant's Dignity at Work meeting with LL on the Programme Evaluation Policy?

3.1.19 Was the Dignity at Work meeting with LL held on 2 March 2022, and responded to by LL on 13 April 2022, conducted in a manner that was contrary to the training materials for these conversations provided by HR? The Claimant contends her concerns about her exclusion from the Programme Evaluation policy document were dismissed.

3.1.20 In Professor FF's assessment report into working relationships between the Claimant and named Colleagues dated 14 September 2022, was there a reference to the fact that colleagues expressed irritation that she engaged with all items on the agenda at a committee meeting?

3.1.21 Did the Respondent fail to or decide not to redeploy the Claimant into the Head of Operations role on 17 October 2022?

3.1.22 Did the Respondent terminate the Claimant's employment on 27 October 2022? The Respondent accepts that it did dismiss the Claimant on this date.

3.2 Did the acts set out at to 3.1.1 to 3.1.22 occur? Unless expressly stated above the Respondent denies the acts took place.

3.3 If it the act(s) are accepted or proven to have taken place, was the act less favourable treatment?

3.4 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.

3.4.1 For the allegations at 3.1.2, 3.1.3, 3.1.5 and 3.1.15 above the Claimant relies on the following real comparators who are white: AA, DD, MM, TT, NN, VV, II and SS.

3.4.2 For the allegation at 3.1.17 the Claimant relies on the following real comparators who are white: QQ, CC, UU and VV.

3.5 In the alternative and / or for the remaining allegations, the Tribunal will decide whether she was treated worse than a hypothetical comparator.

3.6 If so, was it because of the Claimant's race? The Claimant states she is a black woman of white / black Caribbean origin.

3.7 Did the Respondent's treatment amount to a detriment?

4 Disability

4.1 Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

4.1.1 Did she have a physical or mental impairment(s): work related stress, anxiety, depression, post-traumatic stress, neck pain and arm pain.

4.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

4.1.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

4.2 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures? The Claimant refers to the impact of the alleged conditions on her day-to-day activities at paragraphs 3 of her Further & Better Particulars

4.3 Were the effects of the impairment long-term? The Tribunal will decide:

4.3.1 did they last at least 12 months, or were they likely to last at least 12 months? The Claimant contends they began in November 2019

4.3.2 If not, were they likely to recur?

4.4 The Respondent has conceded that the Claimant was disabled under the Equality Act 2010 by way of anxiety and depression from May 2021 to October 2022.

5 Direct disability discrimination

5.1 The Tribunal will decide whether the Respondent subject the Claimant to the treatment the Claimant alleges, namely:

5.1.1 Was the Claimant unsuccessful in her application for the Director of Policy and Projects role submitted in April 2022 and did she receive no feedback on her application? The Respondent accepts that the Claimant applied for the role on 5 May 2022 and was not shortlisted or invited to interview for the role.

5.1.2 Did the Respondent fail to ask what reasonable adjustments could be made in order to allow the Claimant to continue working for the Respondent in her meetings with the Respondent on 6 and 13 October 2022?

5.1.3 Was the Claimant unsuccessful in her application for Head of Operations on 17 October 2022 and did she receive no feedback on her application? The Respondent accepts that the Claimant applied for the role and was not shortlisted or invited to interview for the role.

5.1.4 Did the Respondent terminate the Claimant's employment on 27 October 2022? The Respondent accepts that it did dismiss the Claimant on this date.

5.2 Was that less favourable treatment?

5.3 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. The Claimant relies on a hypothetical non-disabled comparator.

5.4 If so, was it because of disability?

5.5 Did the Respondent's treatment amount to a detriment?

6 Failure to make reasonable adjustments

6.1 The Claimant relies on the following as a provision, criteria or practice (PCP) applied by the Respondent:

6.1.1 The requirement for the Claimant to work with colleagues (BB, CC and DD) without the support in place offered by HH in the grievance letter dated 21 December 2021 until her dismissal on 27 October 2022.

6.1.2 The requirement for the Claimant to work without requested mediation from February 2021 to 27 October 2022.

6.1.3 The requirement for the Claimant to work with colleagues (BB, CC and DD) without redeployment from 18 March 2022 to 27 October 2022.

6.1.4 The requirement for the Claimant to attend three formal meetings on campus to discuss the breakdown in the working relationship between herself and her colleagues on 6 October, 13 October and 27 October 2022.

6.2 The Claimant alleges that a physical feature of the Respondent's premises put her at a substantial disadvantage and that the Respondent failed to make a reasonable adjustment in this regard. The Claimant relies on the following:

6.2.1 A seated desk which the Claimant was required to use from September 2021 to August 2022.

6.2.2 A chair without a headrest for the period which the Claimant was required to use from September 2021 to August 2022.

6.3 Do the above amount to a PCP / physical feature of the Respondent's premises?

6.4 Did the PCP / physical feature put the Claimant at a substantial disadvantage in relation to the relevant matter when compared to a person without her disability? The Claimant relies on work related stress, anxiety, depression and post-traumatic

stress in relation to her allegations at 6.1.1 to 6.1.4 and arm and neck pain in relation to her allegations at 6.2.1 to 6.2.2

6.5 Did the Respondent know or could reasonably be expected to know that the Claimant was disabled within the meaning of the Equality Act 2010?

6.6 If so, did the Respondent know or ought reasonably to have known that the Claimant was likely to be placed at the substantial disadvantage? The Claimant submits that an Occupational Health report on 18 March 2022 and 17 June 2022 recommended a rising desk be provided to the Claimant. The Claimant accepts this was provided on 10 August 2022.

6.7 If so, were there steps that were not taken that could have been taken by the Respondent, to avoid any such disadvantage. The Claimant will allege that the Respondent should have taken the following steps:

6.7.1 Offer to redeploy her to a qualifying role;

6.7.2 Expedite the implementation of extra support to staff and students with disabilities for self-service policy processes such as IT account recovery;

6.7.3 Attend meetings by video or telephone when possible;

6.7.4 Facilitate mediation to support the Claimant in addressing the working relationship issues identified and arising from the application of the grievance and dignity at work policies; and

6.7.5 Provide her with a rising desk and ergonomic chair with a headrest from September 2021.

6.8 If so, would it have been reasonable for the Respondent to have taken those steps at any relevant time?

7 Direct discrimination based on sex

7.1 The Tribunal will decide whether the Respondent subject the Claimant to the treatment the Claimant alleges, namely:

7.1.1 The Claimant was dismissed on 27 October 2022 and because she is female, GG felt that he, due to sexual stereotype, could act in this way towards the Claimant.

7.2 Was that less favourable treatment?

7.3 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. The Claimant relies on a hypothetical male comparator.

7.4 If so, was it because of sex?

7.5 Did the Respondent's treatment amount to a detriment?

8 Unfair dismissal

8.1 What was the reason (or, if more than one, the principal reason) for the Claimant's dismissal?

8.1.1 The Respondent says the reason for dismissal was some other substantial reason;

8.1.2 The Claimant says that it was because of her race, alleged disability, sex and / or because she raised allegations of sexual misconduct.

8.2 Is the reason one of the reasons listed in section 98(2) ERA or some other substantial reason of a kind such as to justify the Claimant's dismissal?

8.3 Did the Respondent act reasonably or unreasonably in the circumstances (including the size and administrative resources of the Respondent) in treating the reason as a sufficient reason to dismiss the Claimant?

8.4 Did the Respondent follow a full and fair procedure prior to dismissing the Claimant?

8.5 Was the dismissal fair in all the circumstances of the case?