



EMPLOYMENT TRIBUNALS

Claimant: Ms. P. Scott

Respondent: Change, Grow, Live

Heard at: Birmingham

On: 3,4,5,6,7 and 10,11,12,13, 14
17 & 18 February 2025

Before: Employment Judge Wedderspoon

Members : Mrs. R. Forrest
Mr. K. Palmer

Appearances

For the claimant: In Person

For the respondent: Ms. Cheng, counsel

JUDGMENT

1. All of the claims of direct race discrimination are not well founded and are dismissed.
2. All of the claims of harassment related to race are not well founded and are dismissed.
3. The claim for breach of contract is not well founded and is dismissed.
4. The claimant is ordered to pay the respondent the sum of £20,000 in costs.

REASONS

1. By claim form dated 4 November 2022 the claimant brought complaints of direct race discrimination, harassment related to race and breach of contract (wrongful dismissal). The claimant was employed by the respondent for a period of 9 months and states that she was badly treated by a number of colleagues and managers and the respondent had from an early stage planned to remove her from their employment. All claims are denied by the respondent who states that it extended the claimant's probationary period on a number of occasions, put in place a support and action plan but ultimately dismissed the claimant by reason

of the fact of her performance was not at an adequate standard and her behaviour was inconsistent with their values.

2. The case has been subject to a number of preliminary hearings. The parties agreed at the commencement of the final hearing that the list of issues (set out by Judge Faulkner in his case management order dated 15 December 2023 page 227 to 234) are the final list. The Tribunal has also set out the actual/hypothetical comparator relied upon for each allegation.

List of Issues

3. Time limits
 - 3.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 26 May 2022 may not have been brought in time.
 - 3.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
4.
 - 4.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 4.1.2 If not, was there conduct extending over a period?
 - 4.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 4.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 4.1.4.1 Why were the complaints not made to the Tribunal in time?
 - 4.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?
 - 4.2 Was the breach of contract (wrongful dismissal) claim made within the time limit in Article 7 of the employment tribunals extension of jurisdiction England and Wales order 1994? The Tribunal will decide:
 - 4.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?
 - 4.2.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?
 - 4.2.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

Direct race discrimination

5. The claimant describes her race as “black Afro Caribbean”.

5.1 Did the respondent do the following things:

5.1.1 In December 2021 by Joanne Williams the claimant’s team leader tell another team leader, Diane Kelly, that on performance grounds she was going to extend the claimant’s probation, prepare an action plan for her and ensure the claimant failed it so that her employment would be terminated.

Comparator Sarah Minshull, Paige and Chris Pinnock

5.1.2 From December 2021 by Ms. Williams plan to dismiss the claimant
Comparator Ms. Minshull, Paige, Mr. Pinnock

5.1.3 From 30 December 2021 by Chardine Roberts the claimant’s line manager, establish an action plan for the claimant and in due course extend her probationary, without consulting with the claimant beforehand about the issues addressed in the plan and giving her the opportunity to improve.

Comparators the other administrators employed in the same locations as the claimant

5.1.4 On or around 4 April 2022, by Tanya McGougan the claimant's senior line manager adopt the falsehood created by Miss. Williams in relation to the claimant’s performance by sending the claimant an e-mail informing her that she had failed to complete the action plan and had thus failed her probation;

Comparators the other administrators employed in the same locations as the claimant

5.1.5 On or around 4 April 2022 by Miss McGougan reached the conclusions referred to above without giving the claimant an option to improve;

Comparators the other administrators employed in the same locations as the claimant

5.1.6 On or around 29 March 2022 by Miss Roberts stated untruthfully or inaccurately in an investigation report at the claimant struggled to generate prescriptions for clients quickly enough and had lost some prescriptions.

Comparator Ms. Minshull

5.1.7 In March 2022 by Georgia Patterson a senior manager from another office, talk about the termination of the claimant’s employment in a corridor at the office where the claimant was based where others could hear what was said

Comparator Ms. Minshull

5.1.8 Permission to add a complaint refused

5.1.9 On or around 21 February 2022 by Georgia Stayning's continue to scan prescriptions in a manner contrary to that indicated to her by the claimant

Comparators Ms. Minshull, and other administrators employed in the same location as the claimant

5.1.10 On the same dates by Miss. Stayning's falsely accused the claimant of not speaking with respect, shouting at the claimant whilst doing so “until you learn to speak to me with respect I will not speak to you”

- Comparators Ms. Minshull and other administrators employed in the same location as the claimant
- 5.1.11 On or around 11 May 2022 by Miss. Stayning's tell the claimant that she was not to use an upstairs room which the claimant was already aware of
Comparators Ms. Minshull and other administrators employed in the same location as the claimant
- 5.1.12 On the same day by Miss. Stayning's shout at the claimant are you going up to the large room you are not allowed to go up there
Comparators Ms. Minshull and other administrators employed in the same location as the claimant
- 5.1.13 On 21 February 2022 by Carl Price stand over the claimant while she was working on reception;
Comparator Ms. Minshull
- 5.1.14 On 21 February 2022 by Mr. Price state to the claimant that she had made a lot of Mistakes, that's questioning her ability to do her job and state that she can sometimes appear to be rude because of the way she speaks to people;
Comparator Ms. Minshull
- 5.1.15 In or around February 2022, by John Loxley sit in the administration room when the claimant was working there;
Comparator Ms. Minshull
- 5.1.16 Permission to add complaint is refused
- 5.1.17 In or around February 22 by Mr Loxley ask Frances to deal with a different type of prescription, instead of the claimant doing so
Comparator Ms. Minshull and Frances
- 5.1.18 In or around February 22 Mr Loxley stand over the claimant and shout repeatedly you can't do it you can't do the work get off prescriptions and go on to reception. Let Francis do prescriptions.. If you could do the job you would be able to do it. You would know this is a custom prescription
Comparator Ms. Minshull and Frances
- 5.1.19 In January February March 2022, by Mr Loxley and Miss. Staynings Check on the claimant while she was operating the telephones by making dummy calls and creeping up behind her
Comparator Ms. Minshull and Frances
- 5.1.20 On 22 February 2022 by Mr Loxley and Miss Staynings question the claimant about an appointment booking and who gave her permission to make it
Comparator Ms. Minshull and Frances
- 5.1.21 On 21 February 2022 by Miss McGougan not take seriously the claimants complaint about Mr. Price, Mr Loxley, and Miss Staynings taking their side straight away
Comparator Ms. Minshull
- 5.1.22 On 2 February 2022 by Trevor Bedford senior quality manager appointed to investigate it complaint the claimant made about her colleague Sarah Minshull on 11 January 2022 show hostility to the claimant by using raised tones being aggressive and shouting at her you dare to defy me and what about your behaviour towards Paige and Harj
Comparator Ms. Minshull or hypothetical comparator
- 5.1.23 On 2 February 2022 by Mr Bedford refused to discuss all of the issues the claimant had reported

- Comparator Ms. Minshull or a hypothetical comparator
- 5.1.24 From 2 February 2022 by Mr Bedford tell the claimant Miss Minshull would not be spoken to as part of the investigation and then later to do so
Comparator Ms. Minshull or a hypothetical comparator
- 5.1.25 On 2 February 2022 by Mr Bedford racially stereotyped the claimant by referring to the way she spoke to people coming across as aggressive
Comparator Ms. Minshull or a hypothetical comparator
- 5.1.26 On 2 February 2022 by Mr Bedford making a decision in relation to her complaints without hearing her account
Comparator Ms. Minshull or a hypothetical comparator
- 5.1.27 In late April or early May 2022 by Helen Sullivan national team manager dismissed the claimants complaints about Miss. Minshull
Comparator Ms. Minshull or a hypothetical comparator
- 5.1.28 In late April or early May 2022 not allow the claimant to appeal Miss Sullivan's decision
Comparator Ms. Minshull or a hypothetical comparator
- 5.1.29 On 12 January 2022, 1 February 2022, 15 March 2022 and 23 March 2022 by Gaynor Taylor HR manager Miss Roberts and or Miss McGougan fail to investigate her complaints against Miss. Minshull
Comparator Ms. Minshull or a hypothetical comparator
- 5.1.30 From 25 January 2022 by Miss Robertson, Miss Michigan failed to investigate the claimants complaints about Paige, Harjit Sanja and Manjit Mahli;
Comparator Hypothetical comparator
- 5.1.31 Permission refused to add this allegation
- 5.1.32 From 16 May 2022 by Miss. Taylor, Miss. Roberts and Miss. McGougan failed to investigate the claimant's complaint about the conduct of Miss Staynings, Mr. Price, Mr Loxley and Mr Bedford
Comparator hypothetical comparator
- 5.1.33 From 11 to 27 May 2022 by Miss Taylor, Miss Roberts and Miss McGougan fails to give the claimant a further hearing in relation to her performance and thus deny her the opportunity to present evidence in relation to it
Comparator a hypothetical comparator
- 5.1.34 On 27 May 2022, Ms. McGougan dismissed the claimant
Comparator Paige and Harjit Sanja
- 5.1.35 On and or leading up to 27 May 2022 by Tanya McGougan failed to comply with the procedural safeguards and requirements set out in the cast coat on disciplinary and grievance procedures specifically by giving the claimant short notice of the dismissal hearing/meeting, not holding a formal hearing and not permitting her to be accompanied to the dismissal hearing/meeting or failing to advise a claimant that she could be accompanied
Comparator a hypothetical comparator
- 5.1.36 On 27 May 22 by Tanya McGougan blamed the claimant for the troubles she had encountered in the workplace.
Comparator Ms. Minshull, Paige and Harjit Sanja
- 5.1.37 Permission refused to add allegation

5.2 Was that less favourable treatment?

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

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

The Tribunal has set out above the comparators identified by the claimant as set out in the case management order of Judge Faulkner dated 15 December 2023.

5.3 If so, was it because of race?

5.4 To the extent it is disputed by the respondent did it's treatment amount to a detriment?

6. Harassment related to race (Equality Act 2010 section 26)

6.1 Did the respondent do the following things:

6.1.1 In December 2021 by Joanne Williams the claimants team leader tell another team leader, Diane Kelly, that on performance grounds she was going to extend the claimant's probation, prepare an action plan for her and ensure the claimant failed it so that her employment would be terminated.

6.1.2 From December 2021 by Ms. Williams plan to dismiss the claimant

6.1.3 From 30 December 2021 by Chardine Roberts the claimants line manager, establish an action plan for the claimant and in due course extend her probationary, Without consulting with the claimant before hand about the issues addressed in the plan and giving her the opportunity to improve.

6.1.4 On or around 4 April 2022, by Tanya McGougan the claimant's senior line manager adopt the falsehood created by Miss Williams in relation to the claimant's performance by sending the claimant an e-mail informing her that she had failed to complete the action plan and had thus failed her probation;

6.1.5 On or around 4 April 2022 by Miss McGougan reach the conclusions referred to above without giving the claimant an option to improve;

6.1.6 On or around 29 March 2022 by Miss Roberts state untruthfully or inaccurately in an investigation report at the claimant struggled to generate prescriptions for clients quickly enough and had lost some prescriptions.

6.1.7 Not this allegation

- 6.1.8 Permission to add a complaint refused
- 6.1.9 On or around 21 February 2022 by Georgia Stayning's continue to scan prescriptions in a manner contrary to that indicated to her by the claimant
- 6.1.10 On the same dates by Miss. Stayning's falsely accused the claimant of not speaking with respect, shouting at the claimant whilst doing so "until you learn to speak to me with respect I will not speak to you"
- 6.1.11 On or around 11 May 2022 by Miss Stayning's tell the claimant that she was not to use an upstairs room which the claimant was already aware of
- 6.1.12 On the same day by Miss Stayning's shout at the claimant are you going up to the large room you are not allowed to go up there
- 6.1.13 On 21 February 2022 by Carl Price stand over the claimant while she was working on reception;
- 6.1.14 On 21 February 2022 by Mr. Price state to the claimant that she had made a lot of Mistakes, that's questioning her ability to do her job and state that she can sometimes appear to be rude because of the way she speaks to people;
- 6.1.15 In or around February 2022, by John Loxley sit in the administration room when the claimant was working there;
- 6.1.16 Permission to add complaint is refused
- 6.1.17 In or around February 22 by Mr Loxley ask Frances to deal with a different type of prescription, instead of the claimant doing so
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- 6.1.19 In January February March 2022, by Mr Loxley and Miss. Staynings check on the claimant while she was operating the telephones by making dummy calls and creeping up behind her
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- 6.1.23 On 2 February 2022 by Mr Bedford refused to discuss all of the issues the claimant had reported
- 6.1.24 From 2 February 2022 by Mr Bedford tell the claimant Miss Minshull would not be spoken to as part of the investigation and then later to do so
- 6.1.25 On 2 February 2022 but Mr Bedford racially stereotyped the claimant by referring to the way she spoke to people coming across as aggressive Comparator Ms. Minshull or a hypothetical comparator

- 6.1.26 On 2 February 2022 by Mr Bedford making a decision in relation to her complaints without hearing her account
- 6.1.27 In late April or early May 2022 by Helen Sullivan national team manager dismissed the claimants complaints about Miss. Minshull
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- 6.1.30 From 25 January 2022 by Miss Robertson, Miss Michigan failed to investigate the claimants complaints about Paige, Harjit Sanja and Manjit Mahli;
- 6.1.31 Permission refused to add this allegation
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- 6.1.33 From 11 to 27 May 2022 by Miss Taylor, Miss Roberts and Miss McGougan fails to give the claimant a further hearing in relation to her performance and thus deny her the opportunity to present evidence in relation to it
- 6.1.34 On 27 May 2022, Ms. McGougan dismissed the claimant
- 6.1.35 On and or leading up to 27 May 2022 by Tanya McGougan failed to comply with the procedural safeguards and requirements set out in the a cast coat on disciplinary and grievance procedures specifically by giving the claimant short notice of the dismissal hearing/meeting, not holding a formal hearing and not permitting her to be accompanied to the dismissal hearing/meeting or failing to advise a claimant that she could be accompanied
- 6.1.36 On 27 May 22 by Tanya McGougan blamed the claimant for the troubles she had encountered in the workplace.

6.1.37 Permission not granted

6.2 If so, was that unwanted conduct?

6.3 Did it relate to race ?

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

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

7. Wrongful dismissal / Notice pay

7.1 What was the claimant's notice period?

7.2 Was the claimant paid for that notice period?

- 7.3 If not, was the claimant guilty of gross misconduct? or did the claimant do something so serious that the respondent was entitled to dismiss without notice?

Hearing

8. On the first day of the hearing, the Tribunal was provided with a bundle of documents (839 pages); cast list, chronology and draft timetable and draft reading list. The respondent also sought to add a grievance policy which the claimant agreed should be included and was added at page 840 to 846.
9. The case had been subject to strike out applications before Judge Maxwell on the Friday (dated 31 January 2025) before the final hearing. Judge Maxwell refused to strike out the claim in response and noted at paragraph 22 and 23 of that judgement *“at the time for agreement of the hearing bundle had passed”*. He stated *“the claimant’s vague and in some respects obstructive approach has frustrated what ought to have been a straightforward exercise. There is no prospect of the claimant engaging with the respondent in a constructive way to agree this before Monday. This issue can however be resolved by my orders today that the updated disclosure bundle provided by the respondent and in the claimant’s possession since at least mid-January can serve as the final version of the hearing bundle save unless the tribunal at the final hearing decide otherwise. This has been provided to her previously and the substance of it several times. If to any extent this causes the claimant a difficulty in practise it is the situation of her own making”*.
10. The claimant requested to add in the ACAS document in respect of conducting investigations along with the ACAS discipline and grievance code of practice. The respondent resisted the application noting the comments of Judge Maxwell on Friday set out above. The Tribunal rejected the application to add in the ACAS documents noting that these documents are within the public domain and the claimant was not prejudiced if they were not included because it did not prevent her in cross examination raising these matters with the witnesses of the respondent.
11. A witness order had been made for Trevor Bedford Quality Audit and Governance manager to attend on Tuesday 4 February. The Tribunal was provided with a medical report which indicated that he was unable to attend the hearing (either in person or remotely) by reason of his ill health. In the circumstances pursuant to the overriding objective, the Tribunal determined to set aside the witness order for his attendance and to consider his witness statement as a written representation. In the circumstances the weight to be attached to his statement was a matter for the Tribunal’s discretion noting that his evidence would not be tested in cross examination.
12. The hearing was time tabled. The Tribunals spent the first day reading and heard from the claimant on day 2 and heard from the respondent’s witnesses days 4,5,6 as follows :-
 - (a) Carl Price Team Leader

- (b) Gaynor Taylor, Regional HR advisor;
 - (c) Georgia Patterson former partnerships and communications officer;
 - (d) Georgia Staynings, Team leader;
 - (e) Helen Sullivan, National team leader;
 - (f) Joanna Williams Senior administrator
 - (g) John Loxley, Team leader
 - (h) Tanya McGougan, Service Manager
 - (i) Chardine Roberts, PHE Project Manager.
13. The final hearing had been listed since 2 April 2024. On day 2 the claimant had not prepared for her cross examination of the respondent's witnesses. In the circumstances that the Tribunal was ahead of the proposed schedule and that the claimant was a litigant in person, the Tribunal granted the claimant 1.5 days to prepare her cross examination of the respondent's witnesses. It was proposed that short witnesses be called first so that the claimant had the weekend to prepare cross examination for the longer witnesses.
 14. The Judge had to ask the claimant not to cut across witnesses when they were answering her questions. She adopted a hostile style of questioning and was asked by the Judge to try and keep the questioning as civilised as possible. She even cut across the Judge on a number of occasions.
 15. On day 5 following cross examination of Mr Loxley the claimant asked whether she could bring another witness. The witness statements had been exchanged by the parties in January. The claimant had been asking about somebody called Maureen, who she alleged Mr Loxley had racially harassed at work. The claimant said she was thinking about calling another person. The Tribunal said that it would listen to an application if made but would need at this late stage strong reasons as to why it had not been considered to call this witness before.
 16. The respondent spaced the witnesses out over the Tribunal listing. The claimant completed her questioning of witnesses on day 4 (having started at 2 p.m.) at 2.46 p.m.; on day 5 at 2.24 p.m.; on day 6 at 2.55 p.m. On day 7 there was a fire alarm so one hour of time was lost in the morning. The claimant was cross examining Ms. Roberts. The Tribunal provided guidance to the claimant as to the allegations she had raised against this witness. Despite this guidance the claimant asked Ms. Roberts a number of irrelevant questions including asking Ms. Roberts about the disciplinary policy and why Ms. Roberts had not disciplined individuals the claimant complained about; the witness stated that there were no disciplinary matters against the individuals which would in any event have to be investigated by others (she managed Sarah). The claimant persistently asked Ms. Roberts why she failed to investigate her complaints; the witness answer remained the same; she had enquired informally with others about matters raised by the claimant but she was not instructed to investigate the claimant's formal grievance and in any event it would have been a conflict because she managed Sarah and Mr. Loxley. The claimant was defiant and

continued this line of questioning. The Tribunal exercised its discretion and implemented its timetabling under Rule 45 and gave the claimant 20 more minutes to cross examine the witness having already timetabled 2 hours for this witness. The Judge warned the claimant if she had not put the relevant allegations to the witness within this timescale the Judge would do it for her. After 30 minutes the claimant has still not put the relevant allegations to Ms. Roberts so the Judge put the allegations to the witness instead.

17. On day 7 security contacted the Judge to state that the claimant kept going into the Tribunal room during breaks. The Judge requested that the claimant did not enter the Tribunal room during breaks. The claimant said she entered the room to get water.
18. At the end of day 7, the Tribunal reviewed the timetable. Ms. Cheng was hopeful that the evidence could be completed by lunchtime on day 8 and said she could be ready with her submissions. The Tribunal determined to allow the claimant further time to complete her submissions and proposed that she give her submissions on the morning of day 9. The claimant then said she wanted until the afternoon on day 9. The Tribunal reminded the claimant that despite the case being listed for over a year, the Tribunal did give her 1.5 days preparation mid trial to assist her and that the Tribunal had reminded the claimant to consider her submissions when the hearing of witnesses had finished within good time of the hearing day.
19. On day 8 the claimant said she had a job interview on Thursday in the morning so could she give her submissions on Thursday afternoon. The claimant said the interview was at 9.30a.m. She had received an email and because of her trial preparation she had not looked at her emails until yesterday. The respondent resisted the application stating that the claimant was aware of the trial dates for some time and that she should give her submissions on Thursday morning as planned. The Tribunal asked the claimant if she could provide the evidence of the interview. The claimant said the email was on her job centre email which was not connected to her mobile telephone. She then said actually the interview was at 10 a.m. (not 9.30 as initially stated) via teams. The Tribunal enquired whether the claimant could do the interview on her telephone and how long it was likely to be. The claimant said she did not know how long it would be but there was also an assessment. The Tribunal was disappointed that the claimant had not provided evidence of the interview but was willing to accept the claimant's request in the circumstances that she was seeking a job opportunity.
20. Following the conclusion of evidence of day 8, Ms. Cheng asked if she could make her submissions at 2.30pm; she had a written document she wished to tidy up first. The Tribunal provided the requested time to the respondent and requested the respondent's solicitor send the written submissions to the claimant. The claimant asked if she had to stay to hear the submissions. The Judge stated it was usual to hear the submissions from the other side; it was the claimant's case after all but it was a matter for the claimant if she wished to stay. The claimant said she "*had places to go*", she "*could not stay*" and confirmed her attendance on day 9 at 2pm to give submissions.
21. The claimant said she wanted to add in more documents. The Tribunal noted that Judge Maxwell had commented in his judgment dated 31 January 2025 that

the time had now passed for the claimant to complain about the documentary bundle having not fed back to the respondent as to the bundle's contents. The claimant proposed to refer to some documents not included in her bundle and attach to her submissions. The Judge stated that the claimant could attach the documents but the respondent was likely to say that the documents were late and not put to the witnesses.

22. Ms. Cheng spoke to her detailed written submissions at 2.30 pm for one hour on day 8. The claimant had determined to leave the Tribunal.
23. The claimant attended at 2pm on day 9 to make her submissions. She attached to her written submissions some documents already included in the bundle (pages 557, 588, 642,641, 544). The claimant also sought to add in additional documents not included in the bundle and the respondent objected. During its deliberations for the final judgment the Tribunal determined to disregard the additional material attached to the claimant's submissions because it had been introduced so late (at the submissions stage); had not been put to any of the respondent's witnesses and the claimant had not introduced the documents in her evidence. Further Judge Maxwell on 31 January 2025 had commented that the time had passed for the claimant to request modifications of the Tribunal bundle having failed to engage with the respondent in its compilation of the bundle. The Tribunal determined that at this late stage any new documentation would prejudice the respondent.
24. The claimant stated that many of the documents were fabricated.
25. At lunchtime on day 10, whilst the Tribunal was deliberating in the case, the claimant attended the Tribunal and informed the clerk that she wished to add in some additional documents the Judge had asked for. The Judge has not asked the claimant to provide any further documents. The Tribunal declined the further documents telling the clerk to inform the claimant that the time for evidence was now concluded and the Tribunal could not accept any additional documentation.

Facts

26. The claimant commenced her employment with the respondent on 10 August 2021 as a PHE (Public Health England) SPOC (single point of contact) administrator. Her contract of employment is dated 5 August 2021 (pages 348 to 353). The respondent provides drug and alcohol rehabilitation services to vulnerable service users throughout England and Scotland. It is commissioned to provide these services under contracts entered into with local authorities and primary care commissioners. The respondent is a registered charity and a registered company limited by guarantee to which the exemption from the use of limited in its name applies.
27. The claimant was employed for the respondent's PHE rough sleepers project based in their Central and West Team in Birmingham. The claimant's primary task related to the generation and administration of prescriptions for the respondent service users. This amounted to between 60 to 70% of the claimant's role (page 295 to 298). The claimant was required to act as "*a single point of contact for service users making contact and provide assessment appointments for drug and or alcohol treatment; support in maintaining and*

updating local and central databases and providing timely and accurate data and information for external and internal stakeholders. This includes record data and information in order that the service operates within the contractual administrative and financial requirements; supporting and managing controlled drug stationary including the prescription production and distribution within the service and ensuring all information in relation to prescription generation database is updated and to administer petty cash management or of supplies invoicing telephone and reception duties building management support of telecommunication and IT systems to ensure that substance users consistently receive high quality services”.

28. The work of the respondent was important in the community providing medication of controlled drugs to homeless individuals on opiate therapy. The process of generating prescriptions was required to be timely; trackable and seamless so that a service user could collect a prescription from the respondent and medication from a pharmacy where required. Delays in the provision of the prescription could have a significant impact on the service user namely there was a risk of their relapse; effect on their physical and mental health; risk of offending and severe consequences potentially for the general public.
29. Telephone calls taken by the administrative staff on reception could be from service users who were running late for an appointment; from a pharmacy to log a service user had failed to collect a prescription or from a doctor from the hospital. The receptionist was not required to action the call but was required to ensure that the call was answered and passed onto the correct worker or manager. The claimant was required to undertake some reception duties.
30. The claimant described her team as quite diverse and consisted of one other black afro Caribbean woman namely Joanna Williams; 11 white team members; two mixed race members (Chardine and Chris Pinnock) and two Indian members (Harjit and Manjit). Mr. Price described the workplace as very diverse (as did Joanna Williams) and stated the races/ethnicities of his colleagues change in the workplace regularly so he was unable to provide a percentage. The Tribunal found the respondent employed a diverse group of employees.
31. Following the claimant's application, the claimant was interviewed by Chardine Roberts (who became the claimant's line manager) and Joanna Williams, Senior administrator and successfully obtained the SPOC role.

Probation

32. The claimant in common with all staff, was subject to the respondent's probationary policy (see page 308). The claimant had a probationary period of six months. The policy also stated if issues do arise in probation or in the appointment support they should initially be raised and discussed in supervision. If there is no improvement these issues should be addressed with the employee in an action and support plan set after consultation with HR. The purpose of the action support plan should be as a supportive tool to improve the employees performance and/or conduct to a satisfactory standard (page 312).
33. In respect of termination employment pursuant to clause 5.5 of the probation policy (page 313) it is stated during probation either party may terminate the

contract of employment by giving one weeks' notice. Pursuant to the policy there was also an entitlement for the employer to determine to end the employment immediately and pay the employee pay in lieu of notice together with any outstanding holiday pay.

Policies

34. The respondent had a Code of Conduct page 315, a Disciplinary Policy (page 327) and an Equality Diversity and Inclusion Policy page 434, grievance policy (page 840-846) and a whistle blowing policy (page 882).

Events

35. On 3 September 2021, Chardine Roberts PHP Project Manager, was sent an e-mail from Joanna Williams (Senior Administrative Control and West Birmingham) detailing concerns she had in respect of the claimant's capability within her role and relationships with colleagues (page 364-365). The claimant had been employed by the respondent for about 3.5 weeks at this stage. Joanna raised that the claimant was still trying to grasp the prescribing process and making some mistakes. It was taking the claimant *"45 minutes to 1 hour to generate a change; the turnaround should be a most a 10 to 15 minute for someone who is slow. This was impacting on the Vishal/homeless team issuing scripts to clients as she is slow"*. Joanna noted that the claimant held very strong views about COVID and *"sometimes inflicts her views on others which she need to be mindful of."* Chardine also received some similar verbal feedback from other staff members about the claimant.
36. On 15 September 2021, Chardine Roberts held a 1:1 meeting with the claimant (page 367 to 368) raising concerns with the claimant. At this stage there were concerns in respect of the claimant struggling to generate scripts and grasp the prescription process and making some mistakes. Chardine discussed the importance of speed when it comes to a script; there was a small window of opportunity with homeless individuals and a lot of them are poor engagers so they need their script in a timely manner. The claimant said she had recently undertaken some training with her colleague Chris Pinnock a project administrator which she found helpful. In respect of relationships with colleagues, in particular the claimant's views about wearing masks and cleaning in light of COVID Chardine explained that her views could be upsetting for some staff and asked the claimant to be mindful of this in her conversations with colleagues and service users.
37. On 28 September 2021 a further 1 to 1 was held with the claimant (see notes page 373-374). At this stage the claimant stated she was happy with the further support she was receiving from Chris Pinnock and Gareth Phillips in processing scripts. It was noted that service users were being told scripts would take 20 minutes but the claimant was taking 50 minutes to one hour to complete. Joanna Williams had created a training plan for the claimant and a discussion took place as to how the claimant would complete this in the next 4 weeks (see page 377). The claimant was noted as making good process and doing well on reception and enjoying it.

38. On 12 October 2021 (page 373) a further 1:1 took place between the claimant and Chardine Roberts. The claimant stated she had completed most of the training but needed support on batch prescriptions (“batch”), Batch prescriptions were repeat dispensing prescriptions. Large volumes of prescriptions are generated which are batched together allowing service users to collect medication at regular intervals without needing separate prescriptions. The claimant needed to learn how to deal with summary care records which contain important service user information created from GP medical records and these needed to be requested by administrators or staff across the service and be uploaded appropriately. It was stated that the claimant needed to learn about petty cash so to manage immediate low value transactions and record and submit receipts appropriately. The claimant still needed help with the prescribing element of her role and that Gareth Phillips would be able to assist with that.
39. A 1:1 took place on 2 November 2021 (page 380-381). Chardine Roberts discussed with the claimant the incident of 29 October 2021 relayed to her by Joanna Williams where the claimant had forgotten to process a prescription due to be picked up by a courier; it should have been arranged to be collected by the delivery driver to take to a pharmacy as an urgent request. The claimant had asked her colleague, Harj for help. The claimant told Harj to hurry up which Harj felt was rude and that Vishaal Seeburrun, a non-medical prescriber was also unhappy about. The claimant explained she felt Harj was unfriendly and would give her dirty looks and that Harj humiliated her. Chardine discussed how the claimant’s colleagues may have perceived her behaviour. The claimant discussed some further issues she had with Harj and another colleague Paige. The claimant believed they were gossiping about her. Chardine told the claimant she would raise this with Joanna so she could speak to Harj and Paige. Chardine raised it with Jo Williams who said she would speak to Paige and Harj
40. On 8 November 2021 Chardine received an e-mail from Joanna raising concerns about the claimant (page 413-414) which included failing to action a script request in a timely manner; it was received at 10:30 a.m. but not actioned until 12:30 p.m. as the claimant had forgotten so that Harj did it. Further the claimant was told to put batch scripts in a white envelope before placing in a plastic envelope but despite this instruction, she put them in a plastic envelope without a white envelope so that they could easily be ripped when opening the envelope. The claimant was told by Paige on three occasions to do so but she determined to do it her own way. Further the claimant spent valuable time questioning a misplaced script and was asked by Joanna Williams to reprint but still she had not done this so Chris had to reprint it. It raised concerns about the claimant ignoring requests from colleagues and questioning them, as well as the claimant’s attitude and demeanour at work. It also stated that the claimant was struggling with some aspects of her role. The claimant had been employed by the respondent for about 3 months at this stage.
41. A 1:1 took place on 16 November 2021 (notes of the meeting are at page 416-417). The claimant stated her situation with Harjit and Paige was now “not too bad” but she still needed support on “batch”. It was noted by Chardine that the claimant was defensive about the issues raised by Jo Williams. Chardine reassured the claimant the respondent was not against her but it was important she listened to Jo when giving her feedback.

42. On 30 November 2021 (page 423-424) Chardine discussed the claimant's training. The claimant said she needed some support on "batch". Chardine told the claimant that batch does not normally take more than one day to learn initial basics to batch. Chardine also discussed the claimant's conduct in the office and lateness to work. The claimant said she felt people didn't want her there (page 417). Chardine explained that the claimant could be defensive. If she or Jo are giving her feedback it is to help and support the claimant become better at managing things. Chardine told the claimant to be specific and highlight concerns and she could look into them (see page 425).
43. On 30 November 2021 Sarah Minshull joined the team working alongside the claimant. They did not get on. Sarah had asked the claimant to put her footwear away as it had an unpleasant odour. The claimant did not like this request and said that Sarah should speak to her when there was nobody else in the room because it caused her embarrassment. The claimant also alleged that Sarah had forcibly shut the printer which the claimant interpreted to be hostile towards her. She complained about Sarah. The claimant attributed matters that went wrong in the hub were Sarah's fault even where there was no proof of Sarah's culpability. Chardine suggested a three-way meeting but Sarah refused to meet the claimant stating she didn't feel like she could speak to the claimant in a constructive way. It was determined between Chardine and Joanna that on a trial basis to keep the claimant and Sarah in separate locations until things calm down (page 458).
44. Charlene undertook the claimant's appraisal on 30 December 2021 (page 428 to 433). The claimant said she was still struggling with batch and had made some mistakes (page 431). She described Chardine as her manager as being "*very supportive*". The claimant described having some issues with Sarah. The claimant said she would submit a document about these. Chardine informed the claimant that a complaint raised was likely to be investigated by another manager who doesn't work closely with either of them. Chardine mentioned they were going to try and keep the claimant and Sarah separate. Chardine noted there was still room for the claimant's improvement particularly in respect of prescriptions and expressed a concern about the claimant's inability to take instructions from Joanna. Chardine informed the claimant she would be extending her probation period to allow her to meet the standards for scripts and build relationships with the team. The claimant would soon be moving from central and West hub to the newly opened Lonsdale hub. A support plan was to be put in place and it was arranged for the claimant to shadow her colleague Gareth Phillips on scripts. It was made clear to the claimant why they were extending her probation and she provided the claimant with a number of objectives within a development plan (page 432 to 433). At this meeting the claimant did not resist her manager's conclusion that her probationary period ought to be extended.

2022

45. On 11 January 2022 (page 443) a further 1:1 took place. The claimant handed Chardine a written document of concern (page 447 to 450). Chardine said that she would look through the document and take it to Tanya McGougan Service Manager of the Lonsdale service. The claimant stated she was unhappy about the probationary extension. The claimant said she had not been happy at

Central and West hub; the claimant was to move to Lonsdale hub on 19 January 2022. Chardine said they could discuss the support plan at the next 1:1. Chardine said that the probation extension would be likely to be four to six weeks. Chardine discussed with the claimant about not getting involved in dramas going on in the office; she needed the claimant and wished to encourage her to knuckle down and try to focus as much as she on her work.

46. On 11 January 2022 (page 447-450) the claimant made a formal written complaint about Miss. Minshull. The complaint included an allegation that Sarah was sucking up to people including managers and Sarah's behaviour towards the claimant. The claimant did not suggest that she was being discriminated against by Sarah on grounds of race or any other discriminatory reason. Instead the claimant's complaint was that Sarah had breached the Code of Conduct and was "*loud, rowdy, unprofessional and extremely intimidating.*"
47. The claimant's complaint was originally investigated by Mr Trevor Bedford. He dismissed the claimant's allegations and found the way that the claimant communicated with others was likely to cause offence (page 512-3) citing as an example his own experiences of the claimant in the investigation process.
48. The claimant was not satisfied with Mr. Bedford's investigation (see her email dated 22 February 2022) so Helen Sullivan was appointed to re-investigate the claimant's complaints (see page 757). Gaynor Taylor was not appointed to investigate the complaints and instead facilitated the investigations (see pages 507, 508 547).
49. On 14 January 2022 Chardine was copied into e-mail correspondence between the claimant and Sarah which she considered was completely inappropriate. She informed the claimant about this and asked her not to do it again (page 451).
50. In order to investigate the claimant's grievance, Miss. Sullivan met with Chardine Roberts on 1 March 2022 (page 516-518); Sarah Minshull 4 March 2022 (page 520-521); Joanna Williams 7 March 2022 (page 541-542) to discuss the claimant's concerns.
51. On 1 February 2022 (page 464-7) a further 1:1 took place between the claimant and Chardine. The claimant confirmed she was happy at Lonsdale hub but still having issues with Sarah. She stated on 25 January 2022 she suffered an attack from Manjit Mahli the service manager at Central West and others prior to her moving to Lonsdale. She stated it was "*a full on attack and they behaved like a pack of wolves who descended on their prey*". The claimant raised this with Tanya McGougan who the claimant said was to investigate. The claimant described it as the most intimidating and violent situation she has ever experienced. The claimant described being disrespected and bullied. She was requested by Chardine to put her complaints into writing.
52. Chardine raised the issue about prescriptions. Prescriptions had got mixed up. Chardine expressed her concerns to the claimant that she had no sense of urgency in seeking to locate the scripts. The claimant said why she should look for them. Chardine stated as the claimant was responsible for administrative tasks she needed to work as a team. She explained to the claimant that she had been managing blank scripts unsafely and she had been doing this in areas

where service users could access them giving the example of the claimant managing scripts sat on reception. The claimant said she did not think this mattered as nobody was coming in. Chardine said it was unsafe and the claimant should not be dealing with bulk scripts in an open reception area due to confidentiality and script security. She referenced the respondent's prescription policy pages 464 to 467. Chardine informed the claimant that a probationary period will be extended again to allow more time to meet the minimum standards required for the role and that it would be outlined within an action support plan.

53. On 3 February 2022 Chardine confirmed the extension of the claimant's probationary period and explained that she would facilitate weekly supervisions for the duration of the support and action plan and provided the claimant with additional training and support to help her meet the required standards for the role. Chardine informed the claimant if she failed to improve it may result in termination of her employment if she failed her probation period (see 475-476) and the support plan the support action plan (page 477-480).
54. On 7 February 2022 the support action plan was put into place (page 477 to 491). The claimant and Chardine met. It had been reported that the claimant had been watching videos on the phone (page 481), been late to reception and ignored a colleague. The claimant inquired whether Georgia Staynings was checking up on her and said that Georgia had been rude to her. Chardine said she'd speak to John Loxley and Georgia but explained they were managers so as part of their roles they would check up on staff to ensure smooth running of the day. Chardine noticed that phones were going unanswered so they may have investigated that. They discussed some further training the claimant would require regarding prescriptions following some errors in reporting incidents. The claimant refused to sign the plan. Charlene explained this to Gaynor Taylor who was providing support with the plan page 492.
55. Chardine and the claimant met again on the week commencing 14 February 2022 (page 484). The claimant was late to work without contacting anyone. Chardine had witnessed the claimant being blunt and rude to her colleague Carl Price team leader. Chardine discussed communicating better with others. The claimant had made a few errors on prescriptions on 18 February which needed improvement.
56. During the week commencing 21 February 2022, Chardine met with the claimant. There were number of reports from Team Leaders who felt the claimant had been rude. The claimant said she was going to put some information into writing but decided against this. Three separate team leaders said there had been a lot of errors made by the claimant on prescriptions and in particular they were not being completed in a timely manner. Chardine raised with the claimant that improvement was still required in the prescribing element of her role.
57. On 21 February 2022 Georgia Stayning spoke to the claimant about uploading change forms for some scripts which had been completed incorrectly by the claimant. Miss Stayning's explained to Mr. Price that she had not received a good response from the claimant and asked Mr. Price if he would speak to her. Mr. Price went to the reception to speak to the claimant and asked her to upload the documents as Miss Staynings had requested. He was standing at the side of

the reception desk. Miss Scott responded negatively and told Mr. Price she had explained to Miss Staynings that she did not do scripts like that and that she wanted to do it herself. Mr. Price explained to the claimant that she had been asked to complete a task by her team leader and to please to do it. The claimant stated that she was not an administrative worker and she knew what she was doing. He tried to explain to the claimant that sometimes the way she reacts and speaks to people can come across as abrupt. The claimant then called Mr. Price a liar and said *“your people are the only ones that think that”*. Mr. Price asked the claimant what she meant by “your people” asking if she was referring to team leaders or something else but the claimant would not explain. Mr. Price thought it was best to leave it at that and told the claimant that he would leave the conversation later and left the reception area. The Tribunal having heard the evidence of both the claimant and Mr. Price, found that Mr Price did not as the claimant alleges say anything about her making lots of mistakes or being rude to other people nor did he stand over the claimant as she contends. Mr. Price raised concerns with the service manager Tanya McGougan about the claimant and she requested he put the details of the incident in an e-mail which he did at page 501. The claimant described in her evidence that the document at page 501 was a complete fabrication by Mr. Price and none of it was true. The Tribunal rejected this contention.

58. On 21 February 2022 the claimant contacted Tanya McGougan by telephone whilst she was attending hospital appointment. Miss. McGougan telephoned the claimant back. The claimant reported there had been an incident with herself and some of the team leaders. Miss. McGougan told the claimant she'll be back at the office and catch up with her (see page 496). On returning to the office she was approached first by Georgia Staynings and later by Mr. Price. She told both individuals to put their concerns in writing see page 499 and 501. She then went to speak to the claimant to hear her version of events. The claimant said that because Miss McGougan had already heard Mr Price's and Miss Stayning's versions that she has already made-up her mind. Miss McGougan told the claimant that wasn't true and that's why she was asking her what happened. The claimant explained that both Miss Staynings and Mr. Price had been rude. The claimant complained about Sarah Minshull and said that Miss Minshull was rude and showed some examples of some correspondence between her and Miss Minshull. Miss McGougan did not consider any of the correspondence as being rude to the claimant. She determined that it all seemed a bit “he said she said” and decided it wasn't appropriate to take any action at that stage as both sides had differing versions of events. She emailed the claimant with a follow up of the discussion and encouraged the claimant to try to forge better relationships with her colleagues (page 502). The claimant did not make any complaint about Mr Loxley on this occasion.
59. In January to March 2022 the service was having issues with its telephone systems so that managers on site would often test the phones to see if they were working. A number of complaints were received from service users to state that telephones were not being answered when they called. Mr Loxley who managed the day-to-day running of the hub including all staff on duty rang the telephone number to test it and nobody answered. He went up to where the telephones were located to look through the window of the door of the room. Mr Loxley observed the claimant in the room using her personal telephone and appeared to be using social media. He rang the telephone number again and the

claimant did not answer the telephone. Mr Loxley went into the room and asked the claimant why she was not answering the phone and why she was using her personal phone. The claimant stated that no calls had come through. Mr Loxley rang it again and the line was clearly ringing on Peaches screen. The claimant responded it had not been working all morning and did not give a reason as to why she was not answering or why she was on her personal phone instead. Mr Loxley reported the claimant to Chardine Roberts. The Tribunal found in the circumstances that calls were not being answered and the claimant suggested no calls were coming through Mr. Loxley was justified in placing a dummy call. The Tribunal rejected the claimant's suggestion that Mr. Loxley crept up on the claimant.

60. On 28 February 2022 Chardine met with the claimant. The claimant had been employed for 6 months at this stage. The claimant's probation was extended for a further two weeks (to 4 April 2022) to address completing prescriptions in a timely manner. The claimant's training needs were discussed and who she should speak to for support (see page 519).
61. At a meeting week commencing 7 March 2022 Chardine had noted that three scripts had gone missing. These had been logged as an incident. The claimant blamed Sarah for losing them but Chardine explained that there no evidence of this and noted that Sarah was not actually on site. Sarah was not at work on 9 and 10 March 2022. The claimant was informed about the importance of logging missing scripts as soon as possible. Chardine was told by Girly Guest (non-medical prescriber) that the claimant had an attitude with her when she was being asked to sign scripts. Chardine raised this with the claimant. The claimant said that Girly wasted time by checking everything. Chardine explained to the claimant that Girly has to check everything in accordance with the process of the respondent. In the previous week, there were 20 void scripts misprinted by a recovery coordinator on 3 March which had now been identified but no record of the same had been uploaded to the voids folder. She reminded the claimant that it was important to ensure they were uploaded.
62. On 11 March 2022, Chardine confirmed the extension to the claimant's probation. She stated she would facilitate weekly supervisions for the duration to support an action plan and would provide the claimant with additional training and support to help her meet the required standards for the role. She informed the claimant failure to improve may result in termination of her employment that she had failed to pass her probationary period (see page 543) The claimant support and action plan was updated (page 534-540).
63. On 14 March 2022 Chardine emailed the claimant regarding some missing prescriptions. The claimant responded on 15 March to say that she couldn't find them and she would report the missing prescriptions accordingly (page 544).
64. On 16 March 2022 Chardine met the claimant. The claimant stated she felt bullied by Georgia. She had chased the claimant about the missing scripts and had been listening into conversations and checking up on her by ringing the claimant's phone. She stated she may have to put something in writing about Georgia. Chardine summarised the conversation in e-mail to the claimant and forwarded to Tanya and Gaynor and explained she had spoken to the Georgia about the same (page 548-549).

65. At the next meeting with Chardine she discussed with the claimant 20 voids which still had not been uploaded to the correct folder (page 539). Chardine reminded the claimant voids needed to be managed better and needed to be uploaded correctly in accordance with the respondents procedures and its prescriptions policy. She noted improvement was still required with the issue of script generation and security.
66. On 23 March 2022 the claimant sent to Helen Sullivan a document titled additional notes on Sarah Minshull for meeting (page 559-561). This document contained no reference to race discrimination. Helen Sullivan explained to Gaynor Taylor Regional HR that she would not be able to discuss the document at the meeting scheduled for 23 March because she needed to read through the complaints and then discuss them with other parties (see page 557).
67. Miss Helen Sullivan met with the claimant on 23 March 2022 (page 562-3) to discuss her grievance against Sarah Minshull. In answer to the Judge's questions Miss. Sullivan stated that the claimant did not raise in this discussion that she was being treated this way by Ms. Minshull because of the claimant's race. The claimant signed the notes of this meeting on 28 March 2022 (page 563) and her statement contained no reference to race discrimination. In fact the claimant was suggesting that a mediation meeting could resolve the issues at this stage.
68. On 25 March 2022 a probationary review took place between Chardine and the claimant page (571-575). Chardine explained to the claimant that she was still taking too long in completing scripts. The claimant disagreed and argued that completing a batch was complicated. Chardine reminded the claimant she'd been in post for six months and that batch had taken longer than expected every time she did it and that prescribing accounted for around 60 to 70% of the claimant's role. She stated that the claimant had not met the requirements of a support plan and her probationary period would be extended for a further month to be monitored fortnightly. The claimant disagreed; she said she found it intimidating that Chardine continued to threaten to terminate her contract. the claimant said that Chardine could not do this and she did not understand her support plan. Chardine said the claimant should have raised the fact she didn't understand the support plan 6 weeks ago when it commenced. The claimant became very argumentative. The probation period was extended to 4 May 2022 (page 574). The claimant stated at this meeting that Chardine was making the decision to extend the claimant's probation based on "*personality clashes and that's it*". She did not raise that she was being subject to race discrimination.
69. Chardine met the claimant again for a 1: 1 page (566-569) and discussed the various means of support for welfare, her relationship with Sarah and Lisa Thompson being upset by some comments the claimant had made. The claimant had discussed children being removed and later returned to a family and became quite personal in her comments about a colleague's experience. Chardine said that the claimant needed to be more mindful about her conversations with others. The claimant said she submitted another complaint about Sarah but she, Chardine would need to deal with it as she was the manager. Chardine told the claimant because she had submitted her complaint as a grievance it would be allocated to a manager to investigate.

The investigation report

70. Chardine compiled an investigation report into the claimant's failure to successfully complete a probationary period (see page 579 to 585 dated 29 March 2022). In the report Chardine said the claimant was not meeting the required standard expected in the prescribing element of a role in terms of time management, errors, concerns around the security of prescriptions as well as missing prescriptions. Further she stated the claimant's attitudes and behaviours had caused difficulties with multiple staff members.

Outcome of the grievance

71. On 30 March 2022 (page 576-578) Helen Sullivan issued the outcome of the claimant's grievance against Miss. Minshull. The claimant's grievance was rejected. During Ms. Sullivan's interviews she asked Chardine about the claimant's first allegation namely that Sarah "sucks up to staff". Chardine said *"she didn't know and she didn't feel that there was anything inappropriate about Sarah's behaviour"* (page 516). In her interview, Sarah stated that she got on with everyone at the office and that she was helpful; she worked as part of a team (page 520). Joanna told Ms. Sullivan that Sarah liked to be kept busy, she was helpful; staff are grateful for her support and that she did not have any issues with this (see page 541). The claimant said that Sarah was not as friendly with her as she was with other staff and that she would play up to management and that Sarah would start arguments with her especially when management was present (page 562). Ms. Sullivan found no evidence that Sarah's behaviour goes against the values or professional conduct expected of the respondent's employees.
72. In respect to the second allegation that Sarah had spoken to the claimant inappropriately about her footwear, Chardine informed Miss. Sullivan that Sarah had politely asked the claimant to remove her trainers and offered to put them into a bag. Although the claimant felt this was rude and that Sarah had humiliated her in front of others Chardine explained she had spoken to Sarah and asked Sarah to be mindful of who was in earshot in the future (which Sarah acknowledged). Chardine told Ms. Sullivan there had been no further instance relating to this (see page 516). Sarah stated there had been a smell and asked if the claimant would put her trainers in a bag. The claimant refused. Sarah stated nobody else was present in the office at the time and she had asked Joanna Williams to have a word with the claimant. Joanna had told her that a locker was available for the claimant to put a footwear in (see page 520). Joanna had not been present for this (page 541). The claimant explained that she considered it unacceptable for Sarah to speak to her the way she did in front of others and that Chardine had said she would not have dealt with the situation the same way. The claimant noted that she had not received an apology about the situation (see page 562). Ms. Sullivan did not uphold the allegation.
73. The third allegation concerned the claimant returning to the office with a radio (having taken it home with her). Sarah had told the claimant not to remove the radio and was alleged by the claimant to have put a sticker on the radio saying "do not move" which the claimant felt was demeaning and intimidating. Chardine stated that Harjit had put the sticker on the radio at page 516 (as did Joanna page 541) which Sarah confirmed. Sarah stated she had simply asked the

claimant where the radio was because she had taken the radio or the radios power cord home on more than one occasion (see page 520). The claimant said that the sticker was not on the radio before Sarah said that to her page 562. Ms. Sullivan did not uphold this grievance point.

74. In respect of the fourth allegation concerning 6 December the claimant couldn't recall what the argument was about, Chardine said she was unaware of the incident (page 516). The claimant said public spats were gross misconduct and Sarah is always angry and slamming things page 562. Ms. Sullivan stated as the claimant was unable to identify what the issue or disagreement was she was unable to gather further information. This grievance point was not upheld.
75. In respect to the fifth allegation, the claimant alleged that Sarah had slammed down the post; threw down the signing book; had snarled at the claimant and asked her unprofessionally in front of her service user which caused the claimant feel embarrassed. Chardine explained that Sarah's account was that Sarah had put the post down, the claimant said "don't throw that at me"; Sarah was shocked because the claimant raised her voice. Sarah told the claimant not to speak to her like that. Chardine said that Sarah had been upset by the incident and told her that she did not want to work at the respondent's anymore. Chardine stated the decision was made to separate the claimant and Sarah. The claimant had asked for mediation with Sarah which Sarah declined (page 517). Sarah's version was that she had a lot of post that day and some fell on the claimant's desk while trying to open the door; the claimant raised her voice; Sarah said she went to the duty room out of sight of colleagues and service users and told the claimant she could not raise her voice at her like that in front of service users (page 520). Joanna said she was not present at the incident but Sarah had a tendency to move around quickly and could bang things down whilst doing so (page 541). The claimant said Sarah was always showing anger in public and could slam things down and slam doors and cupboards page 563. Ms. Sullivan concluded that Sarah's conduct was not against the values or professional conduct expected of the respondent's member of staff. She did not uphold this allegation.
76. The sixth of allegation concerned events on 21 December whilst doing a COVID update via teams Sarah had the radio on full blast and the claimant requested that she turn it off. The claimant said that Sarah refused and turned it down but not off. Chardine spoke to both Sarah and the claimant and Sarah felt the claimant had been rude in asking her to turn the radio down (page 517). Sarah said the claimant did not have her headset plugged in and she had therefore not appreciated that the claimant was in a meeting. Sarah said that she suffered with migraines triggered by noise and would not have had the radio on loudly. Sarah had asked the claimant if she would like to listen to Talk radio because the claimant likes that station. The claimant declined. Sarah stated that she had asked the claimant why her headset was not plugged into her computer and the claimant had told her she was reading the meeting notes on the screen. Joanna wasn't present. The claimant stated that she had to attend an important meeting about COVID; she explained that she had attempted to turn down the radio and Sarah said in a raised tone leave that on. The claimant said she felt Sarah didn't this to aggravate her (page 563). Ms. Sullivan stated that there was a contradiction in the claimant's written complaint and the follow up meeting on 23 March so that she found it was difficult to determine the actual events.

77. The seventh allegation made by the claimant was that Sarah gave her an instruction which was disrespectful and hostile. The claimant alleged Sarah said "I can't work with you in front of others." Chardine said that she had not been present for the incident and understood that Joanne had heard a conversation with both the claimant and Sarah to try and see if they could come to an agreement to get along. Sarah was emotional (see page 517) Joanna was unaware of this but referred to the same instance as the claimant had asked where Sarah was because she couldn't work with Sarah. Joanna said that she had explained to the claimant that they were due to be moving to the new hub shortly and would be working in the same office and that she should speak to Chardine. Joanna explained an incident occurred thereafter which Chardine dealt with and that it was decided it was best for the claimant and Sarah to work in separate offices. The claimant explained that Sarah had said this loudly to others and Sarah like to create a scene and that Sarah was extremely loud and uncouth.
78. In respect of others observations, Chardine said no other staff had complained about Sarah (see pages 517-518). Sarah stated she was feeling under a lot of stress because the claimant kept making accusations about her and explained that she had to have another member of staff with her around the building in case the claimant made another false claim. Sarah told her that she felt like she did not want to work at the respondent anymore. The claimant said she felt that Sarah's refusal to engage in mediation was self-explanatory; the issues could be resolved through a meeting so they could clear the air. The claimant stated that Chardine had never corrected Sarah for her behaviour and that as a manager she needed to show some authority towards Sarah.
79. In the outcome of the grievance investigation at page 578 Helen Sullivan did not uphold the grievance because she did not find any evidence supporting the claimant's complaints. She stated if the findings "do not satisfactorily resolve your grievance you have the right to appeal". The claimant was directed to put her appeal in writing to Gaynor Taylor within 5 working days of receipt of the letter. The claimant did not appeal. The claimant stated in her evidence that she was granted an extension to appeal. The Judge asked who had agreed the extension, when was the agreement made and for how long. The claimant was very vague. Helen Sullivan stated that she had no recollection of any conversation with the claimant about extending the time for her to appeal the grievance outcome. The Tribunal concluded that the claimant made this evidence up. Under cross examination the claimant asked Ms. Sullivan whether she had seen Mr. Bedford's notes about his grievance investigation. Ms. Sullivan stated that she did not and considered it could have impacted on her impartiality if the notes had been leading or misleading. The claimant suggested to Ms. Sullivan to complete her investigation she should have looked at Mr. Bedford's notes. Ms. Sullivan stated she felt she should look at matters afresh from an impartiality perspective. The Tribunal determined that Ms. Sullivan had taken her role seriously and was careful to ensure that she was independent in considering the claimant's concerns.
80. Under cross examination the claimant asked Ms. Sullivan on a number of occasions why she failed (following interviewing individuals as part of the grievance) not to inform the claimant about the interviewees' responses to her allegations so to get the truth. Ms. Sullivan maintained she was there to consider

whether the grievance should have been upheld by taking all the information into account. Ms. Sullivan also clarified that the claimant had not at any time either in her written grievance dated 11 January 2022 or interview on 22 March (the claimant signed the notes on 28 March) suggested that she had been subject to racial discrimination.

81. On 4 April 2022 (page 588) the claimant was invited to probationary disciplinary meeting by Ms. Gaynor Taylor, Regional HR advisor following the failure of the claimant in the support and action plan and ongoing performance issues. The meeting was to take place on 22 April 2022 at 11:00 a.m. via team (see page 590 to 591). She attached the investigation plan and a copy of the respondent's disciplinary policy and probation policy. She stated that the outcome of the disciplinary hearing could result in the claimant's dismissal. She explained that the claimant could submit a written statement for consideration in advance of the hearing and explained what would happen at the hearing. She also informed the claimant of the statutory right to bring along a work colleague or a trade union representative to accompany her at the hearing and to let her know if the claimant needed any reasonable adjustments to enable her to fully participate in the process and attend the hearing. She reminded the claimant of the respondents employee assistance programme.
82. The claimant took a period of sickness absence so that the meeting was rescheduled for 11 May 2022 (see page 612-613)
83. On 29 April 2022 (page 606) Chardine wrote to the claimant regarding her final extension to the probationary period and reminded her to send through her sick notes on 29 April (page 607 to 608).
84. The claimant returned to work on 3 May 2022 a return to work meeting took place between the claimant and Chardine (page 613). The claimant informed Chardine she did not want to meet further with Helen to discuss other complaints until her meeting to discuss her probation had taken place (see pages 615, 616 to 618).
85. Prior to the claimant's disciplinary probation hearing on 11 of May (page 620-624) the claimant submitted another complaint about a number of her colleagues. Gaynor Taylor explained to the claimant that whilst she understood the claimant was raising complaints she would need to bring the document to the hearing as mitigating circumstances (see page 618). Miss Taylor noted that the claimant had raised a complaint to Jack Prendergast page 639 and asked it to be included as an addendum to the minutes of the claimant's disciplinary probation hearing (see page 637). The claimant's additional document dated 11 May 2022 (pages 621-625) alleged that Chardine and Tonya McGougan pre-determined the claimant would be dismissed and made a number of statements as to why she felt that this was the case. The claimant also complained about a number of colleagues within the document and accused the respondent of breaching policies of Equality Diversity and Inclusion, Data Protection Act; Disciplinary; Probationary and Appointment Support Period Code of Conduct, Bullying and Intimidation. There was no express allegation of race discrimination contained in this detailed document.

86. On 11 May 2022 the disciplinary meeting took place (page 625 to 629 and 632 to 637). The hearing was meant to commence at 11:00 a.m. but the claimant didn't attend until 11:40 a.m. stating she had not planned to attend at all. She had not read the documents because she had submitted a complaint. She said she did not have a copy of the report. She was provided with a copy and the meeting was adjourned to allow the claimant to read the report. Chardine presented the report which concluded that the claimant had sufficient time working for the respondent to be able to meet the required standards of the role around her prescribing responsibilities and she felt there continues to be issues with the claimant's relationships with the team. Chardine referred to some missing scripts. The claimant began an argument with Chardine and asked why she was being blamed for missing scripts stating she hadn't been in the post long enough. The claimant alleged Sarah Minshull's work was shabby and the procedure needed to be rewritten. Gaynor asked the claimant if there was anything the claimant could like to say. The claimant stated that she was doing the work and staff had problems with her not the other way round. The claimant's relationships with colleagues were not good and the claimant said she had repeatedly spoken to Chardine about issues. It was proposed the claimant write down her response for any mitigation having read through the investigation. The claimant did not acknowledge any fault of her own but instead blamed others. She did not expressly raise the allegation of race discrimination during the meeting.
87. The claimant alleged in evidence that there was to be another disciplinary hearing after 11 May to consider her mitigation. The Tribunal determined that this was incorrect. The notes indicate that on 11 May 2022 (page 629) that the claimant was provided with an opportunity to submit some mitigation. There was no suggestion by the respondent there would be a further meeting. It was implied that the chair would consider the claimant's mitigation on paper before reaching a decision. In the pre-meeting at page 625 the claimant was informed that the respondent would speak about the other complaint (dated 11 May page 620-624) in another meeting.
88. On 16 May 2022 the claimant sent in another document (page 643 to 644 and 645 to 652) these included additional complaints about her colleagues (Georgia Staynings, Carl Price, John Loxley, Trevor Bedford). The claimant referred that the Equality Act 2010 had been broken. *"I believe that the reason for the behaviour of the staff I have mentioned is due to my protected characteristic of race"*(see page 650). This was the first time the claimant had expressly stated this. She also alleged that Trevor Bedford came out with a lot of racial stereotypes of black people and attached them to me.
89. On 18 May 2022 Miss. Scott sent in a further complaint (pages 655-658-662). In this document the claimant alleged that people dislike her because of racist stereotypes of black afro Caribbean people surfacing. She also contended at this stage that Carl Price and John Loxley were menacing. The claimant confirmed she would like this to be treated as further information and a formal complaint (see page 642). The disciplinary hearing was delayed allowing Miss McGougan to take the documents into account as part of her mitigation (see page 653).
90. Ms. McGougan considered the evidence presented and the claimant's mitigation. In respect of the first issue that the claimant had not met and

maintained the required standards for prescription generation management Miss McGougan concluded that this took around 70% of the claimant's role and she was unable to maintain competency in this respect. A number of errors were highlighted as well as the incident involving missing prescriptions. The claimant alleged that three other administrators had been trained to produce prescriptions for Buvidal but she had not. She denied in the hearing that she was involved in the missing prescriptions. The four administrators in the office were from two separate teams with different remits. The claimant's remit (along with another SPOC administrator) was to complete prescription requirements for the rough sleepers homeless service users (blue prescriptions). The two other administrators worked in the Buvidal team and completed Buvidal prescriptions. No training had been undertaken for all administrators to complete Buvidal prescription so Miss. McGougan could not uphold claimant's mitigation as she did not administer prescriptions for Buvidal.

91. In respect to the missing prescriptions the investigation suggested that no one but the claimant could have been involved in this and this was a serious incident which was her error. These prescriptions were eventually found mixed up in a box of prescriptions. The respondent considered prescription security to be paramount to the claimant's role. The claimant stated she was able to complete her work by the end of the day. Ms. McGougan believed it was a reasonable expectation to complete the scripts in a day given the low numbers of service users and subsequent low volume of prescriptions within the claimant's service. Due to the low volume of prescriptions Ms. McGougan concluded that a high level of accuracy should be maintained but the claimant had not sustained this.
92. In respect of the claimant's inability to demonstrate attitudes and behaviours in line with the respondent's values the claimant had a number of disagreements with various staff at both the Lonsdale hub and the Central and West hub. She noted that the claimant had shown no insight in the part she had played even though informal investigations had shown the claimant to be the instigator. She noted that the claimant had also been unable to follow managerial instruction. These issues had been raised by Chardine in a number of the claimant's 1 to 1. She also noted that claimant's mitigation included allegations about colleagues suggesting that Chardine and Ms. McGougan had been plotting to get rid of the claimant. The claimant alleged that Georgia Patterson had previously been pleasant to the claimant but during a hub visit in March did not acknowledge the claimant and overheard Georgia talking to a group stating they're going to get rid of her. Georgia disputed this stating she only recalled seeing the claimant once and could not recall what the claimant looked like. The claimant's mitigation was not upheld (page 835).
93. There was a dispute as to whether the claimant had been advised about the appointment of the new senior administrator Toni Thacker. Chardine stated that Toni coming into post was discussed with the claimant on a number of occasions. Toni stated he tried to introduce herself to the claimant but the claimant was on the phone and made no effort to acknowledge her Toni was unable to take over the claimant's line management immediately as Chardine wanted to provide the claimant with support and consistency going through a probation process. Ms McGougan dismissed this part of the claimant's mitigation.

94. The claimant's allegation that Toni took the phone numbers of three other administrators but not the claimant's was rejected. Toni stated she had not taken any numbers; she asked a colleague for another senior administrators phone number when she needed support.
95. The claimant made allegations of bullying against 4 managers which she submitted as a separate complaint. Miss. McGougan did not consider these allegations had any bearing on the claimant's capability or conduct as the claimant had not cited these as reasons for her behaviour. Miss McGougan determined that such allegations should be investigated separately and recommended that be referred to the HR department.
96. Ms. McGougan noted in the course of the meeting the claimant attended late she spoke over others and was disruptive. She considered her attitude and behaviour incongruent with the respondents organisational values and decided to dismiss the claimant on the ground she had failed to complete a probationary period.
97. On 27 May 2022 the claimant was invited and did attend an outcome meeting with Ms. McGougan who went through the outcome letter with the claimant (page 666-9) The claimant was dismissed immediately and was paid 1 weeks' pay in lieu (page 836).
98. On 27 May 2022 claimant appealed her dismissal (page 671-676). The claimant alleged breaches of policies and procedures and that the dismissal was unfair. The claimant did not allege expressly race discrimination and did not allege that following submission of her mitigation there should have been a further meeting (as she did in evidence at the Tribunal hearing). The claimant alleged generally breaches of equal opportunities, equality and diversity policies.
99. By letter dated 20 June 2022 (page 677-8) the appeal hearing was scheduled for 24 June 2022. The claimant submitted a further document pages 679-685. The appeal hearing took place on 24 June 2022 (page 686 to 694) chaired by Minesh Patel. By letter dated 29 June 2022 (page 695-8) the claimant was sent an appeal outcome. Her appeal was rejected.
100. The claimant stated she no longer wanted the respondent to investigate the complaints she previously submitted (see page 699).
101. The claimants submitted further complaints which were also investigated. An outcome was delivered on 31 October 2022 page 775-777 778-781; 786-789.
102. In her evidence the claimant informed the Tribunal that she was aware of the right to bring an employment tribunal claim and was aware of the relevant time limits (she was aware she had three months plus some ACAS time) having brought a previous race discrimination complaint to the tribunal. The claimant stated that ACAS told her the date to submit her ET1. She was not a member of the trade union and had always represented herself. However the claimant accepted on further questioning by respondent's counsel that at page 88 at a Preliminary Hearing she was represented by Mr Patrick, a solicitor.

Law

Direct race discrimination

103. Section 13 of the Equality Act 2010 provides that a person A discriminates against another B if because of a protected characteristic A treats B less favourably than A treats or would treat others.
104. It is necessary to establish if the respondent has treated the claimant less favourably than it treated or would treat others and the difference in treatment is because of the protected characteristic. The Tribunal is to make a comparison with an actual or hypothetical comparator in not materially different circumstances (see section 23 of the Act). It is possible to use the evidence of comparators in materially different circumstances to construct a hypothetical comparator and determine how such a hypothetical individual would be treated. However a statutory comparator as per section 23 of the Equality Act 2010 must be a comparator in the same position in all material respects of the victim save that he or she is not a member of the protected class see **Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 IRLR 285**.
105. The Tribunal must decide why the claimant was treated as she was. The case of **Nagarajan v London Regional Transport 1999 IRLR 572** identifies this as the crucial question.
106. As to whether the alleged less favourable treatment was because of the protected characteristic, the key focus for the Tribunal is on the reason why the claimant was treated less favourably and whether it was the protected characteristic. This usually requires a consideration of the mental processes whether conscious or subconscious of the alleged discriminator see the case of **Islington London Borough Council v Ladell 2009 ICR 387**. In relation to discrimination claims the Tribunal has to determine the reason why the claimant was treated as he was and if the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment that is sufficient to establish discrimination. It need not be the only or even the main reason; it is sufficient that it is significant in the sense of being more than trivial. Direct evidence of discrimination is rare and Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two stage test set out in **Igen limited v Wong 2005 IRLR 285 CA**. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination than it need not go through the exercise of considering whether the other evidence absent explanation would have been capable of amounting to a pre may face a case under stage one of the Igen test.
107. Section 136 of the Equality Act 2010 provides that where the Tribunal finds facts from which it could conclude that unlawful discrimination has taken place the burden of proof shifts to the respondent to prove that the action was non-discriminatory. This operates in two stages first the claimant must prove on the balance of probabilities facts from which the tribunal may infer the discrimination has taken place second and only if the treatment does so the respondent must prove on the balance of probabilities that the treatment was in no sense whatsoever because of the protected characteristic.

Harassment

108. A person A harasses another B, if (a) engages in unwanted conduct related to a relevant protected characteristic and (b) the conduct has the purpose or effect of (i) violating their dignity or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
109. It is not sufficient that the unwanted conduct occurs; it must be shown to be related to the relevant protected characteristic.
110. Harassment does not have to be deliberate to be unlawful. If the unwanted conduct related to the relevant protected characteristic was deliberate and is shown to have had the purpose of violating B's dignity or of creating an intimidating hostile degrading humiliating or offensive environment for B; the definition of harassment is made out. The Tribunal must consider the factors set out in section 26 (4) of the Act namely (a) the perception of B and (b) the other circumstances of the case (c) whether it is reasonable for the conduct to have that effect.
111. Not every adverse comment or conduct may constitute a violation of a person's dignity. In **Richmond Pharmacology v Dhaliwal** Tribunals were advised not to encourage a culture of hypersensitivity by imposing liability on every unfortunate phrase so not to cheapen the significance of the meaning of the words used in the statute i.e. "intimidating hostile degrading" which were an important control to prevent trivial acts causing minor upset being caught in a concept of harassment. Even if there is a conduct which is sufficient to attract the necessary epithets, the conduct must still be related to the protected characteristic. A single incident can be sufficient provided it is sufficiently serious see the case of **Bracebridge Engineering Limited v Darby (1990) IRLR 3**. Related to is a broader concept than because of see the case of **Hartley v foreign and Commonwealth Office services 2016 ICR D17**
112. The Tribunal had regard to the principles summarised in paragraphs 85 to 89 of **Pemberton v Inwood 2018 ICR 1291** and to chapter 7 of the Code which deals with harassment. In particular "unwanted conduct" can include "wide range of behaviour" (see paragraph 7.7) and it is not necessary for an employee to expressly state they object to the conduct (see paragraph 7.8). Unwanted means unwanted by the employee; see the case of **Thomas Sanderson Blinds Limited v English EAT 0316/10**.
113. In order in order to determine whether the conduct is related to the protected characteristic it is necessary to consider the mental processes of the alleged harasser see the case of **Henderson v General and Municipal Boiler Makers Union 2016 EWCA Civ 1049**. This may be conscious or unconscious as stated by Lord justice Underhill in the case of **Unite the Union v Nailard (2018) EWCA Civ 1203**

"it will of course be liable if the mental process is of the individual decision takers are found with the assistance of section 136 if necessary to have been significantly influenced, consciously or unconsciously by the relevant protected characteristic."

114. Whilst the mental process is both subconscious and subconscious are relevant in the case of **Carozzi v University of Hertfordshire 2024 EAT 169** it was held that

“no requirement for a mental element equivalent to that in a claim of direct discrimination for conduct to be related to a protected characteristic. Treatment may be related to a protected characteristic where it is because of the protected characteristic but that is not the only way conduct can be related to a protected characteristic and there may be circumstances in which harassment occurs where the protected characteristic did not motivate the harasser.

Take for example a person who unknowingly uses a word that is offensive to people who have a relevant protected characteristic because it is historically linked to oppression of people who have the protected characteristic. The fact that the person when using the word did not know that it had such a meaning or connotation would not prevent the word used being related to the protected characteristic. That does not necessarily mean the person who used the word would be liable for harassment because it would still be necessary to consider whether the conduct violated the complainant's dignity. If the use of the word had that effect but not that purpose the employment tribunal would go on to consider the factors in sub paragraph(4) section 26 of the Equality Act 2010. That said there would be circumstances in which even though the word was used without knowledge of the offensive connotations having considered the factors in sub paragraph(4) perception of the recipient other circumstances and whether it is reasonable for the conduct to have that effect the use of the word would nonetheless amount to harassment under section 26 Equality Act 2010.

115. The claimant is not required to possess the protected characteristic relied upon provided that the unwanted conduct is related to the characteristic nor does the conduct have to be directed at the employee. For example harassment can occur where someone is associated with someone who has the relevant protected characteristic; **EBR Attridge LLP formerly Attridge law and another v Coleman 2010 ICR 242** Where someone is perceived to possess a relevant characteristic but does not or where the characteristic is attributed to the claimant in the knowledge that they do not possess it.
116. In **Moxam v Visible Changes Limited and another EAT 0267/11** It was held that it does not matter what racial group the claimant comes from she is entitled to be offended and to bring a claim where she suffers as a result of any discriminatory language and conduct.

Breach of contract

117. The Tribunal need to determine factually whether the claimant was paid one weeks' notice in lieu as there was no dispute that the claimant's contract of employment provided her employment could be terminated with one weeks' notice and the respondent had an entitlement to pay the claimant in lieu.

Submissions

118. The respondent provided written submissions and supplemented these with oral submissions. The respondent submitted that any complaints occurred 26 May

2022 were not brought in time so that the majority of the allegations are outside of the primary time limit save for allegations 2.32, 2.34, and 2.36. It was submitted that there was no argument from the claimant that conduct extended over a period. There could be no continuing act as this case concerned discrete acts involving different individuals.

119. The burden rests on the claimant to establish that time should be extended and the claimant had not given any evidence about that. She gave no explanation why she failed to present the claim form earlier. The claimant is a litigant of person but has brought claims before. In any event there is no prejudice to the claimant because all claim should fail on the merits.
120. In respect of credibility her case is that the respondent planned to dismiss her because of direct act race discrimination but the contemporaneous documentation of the dismissal establishes the claimant was a poor performer and behaved poorly. The claimant was rude and at work as displayed in the Tribunal the claimant did not follow instructions. She spoke to the witnesses and the Judge in an inappropriate tone and failed to follow the Tribunal directions as set out in Judge Maxwell's order dated 31 January 2025.
121. It was submitted there was no evidence of direct race discrimination. The organisation was diverse. No black Afro-Caribbean employees faced difficulties with career progression (see the personal experiences of Ms. Williams and Ms. Roberts). If this organisation was racist it could have dismissed the claimant much earlier and not extended the claimant's probation 5 times.
122. The claimant did not understand procedures and individual roles. Ms. Taylor explained her role as HR advisor; not a decision maker. The manager's discussion of the claimant's performance as part of investigation was described by the claimant as back biting. The claimant questioned Ms. Roberts failure to apply the disciplinary policy; that had nothing to do with the grievance policy. The claimant misunderstood "payment in lieu". The claimant described concerns raised by the respondent as petty and not serious enough to warrant an action.
123. The respondent submitted that the claimant was dishonest. The claimant wrote an email in March 2024 to the Tribunal stating that the respondent did not attend the first preliminary hearing; the order in the bundle indicates that the respondent did attend. At the strike out application on 31 January 2025 the claimant said she did not collect the hard copy bundle from the Tribunal supplied by the respondent. Following discussions, Judge Maxwell noted that the claimant had the hard copy on her desk and was referring to it. She conceded that she had collected the bundle (see paragraph 7 of his order). The claimant told the Judge she always represented herself but later conceded she was represented during the first preliminary hearing. It was submitted that the claimant made extreme allegations; she contended that the respondent's documentation was fraudulent.
124. It was submitted that the claimant's allegations were retaliatory/reactive to concerns raised about her performance. It was submitted that the claimant was an unreliable witness; .vague with no contemporaneous documentation to support her allegations. The claimant also changed her story in the trial. In contrast the respondents' witnesses gave consistent evidence with the contemporaneous documentation. The Tribunal could place weight on Trevor

Bedford's witness statement which was supported by the contemporaneous material.

125. The respondent made submissions in respect of each of the allegations. Joanna Williams has no recollection of the alleged comment. Further it was unlikely Ms. Williams would make such a comment because she is not the claimant's line manager without any responsibility to make a decision about the claimant's probation. Ms. Williams planning to dismiss the claimant was inconsistent with the numerous extensions to the claimant's probation. In respect of the action plan, the claimant conceded she needed improvement. The action plan commenced on 7 February 2022. It was discussed by Ms Roberts with the claimant in December 2021. Following determining to put in place an action support plan there was no need under the policy to consult with claimant. Ms. McGougan invited the claimant to meet at the disciplinary probation meeting to discuss her action plan but Ms. McGougan had not reached any conclusion or adopted any falsehood; she was holding a hearing and then reaching a determination; she had reached no conclusion at the time of the invitation.
126. The claimant had been given numerous opportunities to improve by way of extensions to her probationary period. Ms. Roberts did state the claimant failed to generate prescriptions quickly enough based on feedback and appended to her report an evidence table (page 597-587) concerning the speed of the claimant so that her assertions were based on evidence. The claimant also lost some subscriptions when she was responsible for the scripts on 9 and 10 March. The claimant blamed Ms. Minshull but Sarah was not on the site on those days. Ms. Roberts watched CCTV evidence. Georgia Patterson had no recollection of discussing the claimant and did not know her or the claimant's race. It was unlikely Ms. Patterson would be talking about claimant's employment. Ms. Patterson was not in a management position. In her role, Ms. Patterson had to be positive about CGL. In any event the claimant's evidence was vague and she did not allege Ms. Patterson actually identified her. In respect of the events of Georgia Staynings on 21 February, her account was that she offered assist the claimant and the claimant said Georgia was doing it wrong. Ms. Staynings did not continue to scan and Georgia handed them back to the claimant. Ms. Staynings gave evidence consistent with her written statement and note to Tanya (see page 502). The claimant does not challenge Ms. Staynings email. The claimant was asked about this in cross examination and the claimant conceded this allegation was not covered in her witness statement. In respect of the allegation that Georgia shouted at the claimant when she saw the claimant by the lifts and told her not to use second floor, it is significant that both agree Ms. Staynings was a fair distance from the claimant when she spotted her so had to raise her voice. Carl Price did not stand over the claimant but stood at the side of reception and the claimant conceded this in cross examination because Mr. Price did not want to be overheard by others. Again this was not included in the claimant's witness statement. The claimant was unclear about Mr. Price's behaviour and her evidence was contradictory. Given the claimant's lack of clarity and inconsistencies, the Tribunal was invited to favour Mr. Price's evidence. Mr. Loxley was concerned about the claimant's errors and instructed her to move to reception and ask Frances to do the prescriptions. The claimant refused his instruction. In respect of making dummy calls, it was part of the claimant's role to answer incoming calls. Service users had complained phones were not being answered. Mr. Loxley was entitled in these circumstances to call

the telephone number to test the line and no one answered. He saw the claimant looking at her personal phone. Under cross examination both Mr. Loxley and Ms. Staynings stated they did not creep up on the claimant but entered the room quietly so not to disturb the claimant. There was no evidence in the claimant's witness statement about the appointment booking allegation and neither Mr. Loxley/Staynings could recall it. Ms. McGougan was not responsible for looking into complaints dated 21 February and the claimant did not complain about Mr. Loxley. Ms. McGougan did take the incident with Mr. Price and Ms. Staynings seriously shown by gathering evidence and did not take sides. The claimant alleged Trevor Bedford showed her hostility but she doesn't raise he said "You dare to defy me"; the claimant said it was something I recalled later which was implausible. In respect of Mr. Bedford not going through all points; he did eventually discuss all complaints; see his notes. The claimant alleged he racially stereotyped her but he doesn't say she is aggressive. Further the claimant's email dated 22 February does not raise this allegation against him (page 507). Mr. Bedford did hear her complaint (see page 471). Ms. Sullivan's outcome grievance did not uphold complaints following conducting an investigation and found no evidence to substantiate those allegations (page 576-78). Ms. Sullivan's evidence was that she decided did not benchmark the grievance for further action. On 3 May the claimant stated she was not available but communicated she did not want to attend further grievance meetings until her disciplinary was concluded (see page 615). In July the claimant confirmed she did not want the respondent to investigate her complaints. The claimant was given the right to appeal the grievance outcome (5 working days see page 578). The claimant did not to appeal and her alleged agreed extension of time to appeal is not mentioned in any documentation or witness statement. In respect of complaints dated 12 January, 1 February 2022, 15 March 2022 and 23 March 2022 Ms. Taylor, Ms. Roberts and Ms. McGougan were not appointed to investigate her complaints. Ms. Roberts forwarded the complaints to HR to be investigated. For the complaint dated 11 January Mr. Bedford was the investigator. The claimant was dissatisfied with Mr. Bedford so the respondent appointed Ms. Sullivan. The claimant declined a meeting in May to discuss her further grievances. The claimant did not raise formal grievances against Harjit and Paige. On 1 February 2022 the claimant said she will write about this in further detail but never made a formal written complaint. There was no promise of a further disciplinary hearing after 11 May 2022; the claimant was permitted to add mitigation documentation. The claimant met on 27 May 2022 with Ms. McGougan for an outcome meeting (this was not a disciplinary hearing and the ACAS disciplinary code of practice did not apply). The claimant had been given the documentation in plenty of time to the meeting; she had 5 weeks' notice. She was informed of her right to be accompanied for 11 May meeting which the complaint conceded in cross examination. Tanya McGougan found the claimant to have had a number of disagreements.

127. The allegations have nothing to do with race but the respondent acted on the evidence it had. The evidence showed the failed to generate prescriptions based on evidence. This formed 60 to 70% of the claimant's role. There was no less favourable treatment. No evidence that race could have been a factor in the treatment of the claimant. The respondent denied any harassment related to race. The conduct had nothing to do with race and her allegations did not meet the statutory definition.

128. The claimant's claim for wrongful dismissal was misconceived. She was entitled to one weeks' notice under her contract which could be paid in lieu. See page 313. The claimant was dismissed immediately but paid in lieu. The claimant failed to mention this claim in her witness statement. The respondent submitted all claims should be dismissed.
129. On day 9 the claimant attended at 2pm to give her submissions. The claimant provided a written document and said she was happy for the Tribunal to read it. The Tribunal had sent the claimant a word copy of the respondent's written submissions and on her request a PDF copy (as did the respondent's solicitor). The claimant confirmed that she had received the written submissions of the respondent yesterday but could not download it. She then said she had read it.
130. The claimant submitted there are many core functions of a human resources department which included every HR practitioner staying up-to-date with employment law and organisational policies and procedures and that a critical function of HR was the adherence to relevant employment laws to avoid any legal complications. The claimant submitted that employers and their staff can ensure that they are fair to all parties involved while also helping to eradicate discrimination and promote equality in the workplace. The claimant submitted when she cross examined Miss Taylor everything she said was wrong and she did not carry out her role as HR officer correctly with regards to her issues and that she did not appear to know the functions of her role. In respect of notes at page 516 Ms. Taylor said that she wouldn't have read the complaints fully so to remain independent. The claimant contended the role of the HR officer was to read all documentation thoroughly to ensure it's correct, fair and complies with the law. The claimant said it was of no surprise that respondent failed to follow ACAS policies and employment law. In respect of Mr Bedford's notes at page 458 she stated Miss Taylor confirmed she hadn't read them and didn't discuss the content with Mr Bedford. The claimant submitted this was an unbelievable reply because Miss Taylor should have read the documentation she had mentioned because it was highly offensive and racist. The claimant referred to her last strikeout application and invited The tribunal to look at an e-mail at page 511 sent by Mr Bedford about her. The claimant submitted that the tone used by Mr. Bedford matches the behaviour in her complaints against him and his verbal exchanges; she said this man is a racist. The claimant stated there were two primary functions when it comes to employee relations namely HR helps prevent and resolve problems or disputes between employees and management and secondly they assist in creating and enforcing policies that are fair and consistent for the whole of the workforce. The claimant said that Miss Taylor and the respondent did not adhere to this function. The claimant submitted that the respondent has failed to carry out an employee relations role. The claimant stated that the respondent was in breach of the ACAS grievance policy, the ACAS disciplinary policy, the Employment Rights Act 1996, the Equality Act 2010, victimisation, harassment, ACAS equality diversity and inclusion policy, ACAS dismissal policy, their bullying and harassment policy; their code of conduct; their safeguarding policy their dignity and respect policy under their Equality and Diversity policy;
131. The claimant submitted that the respondent alleged that the meeting on 11 May 2022 was a disciplinary hearing and the meeting on the 27 of May 2022 was the outcome meeting. The claimant submitted this is not correct. The claimant stated

she wanted Miss. Taylor to investigate her complaint formally so there would have had to be another meeting to discuss the issues the claimant had raised. The claimant referred to page 625; in the pre meeting there is a reference to another meeting about the complaint the claimant had made. The claimant asserted this was the follow up meeting. The claimant stated that her complaints could not have been looked at as part of Miss. McGougan's dismissal. Miss Taylor referred in her evidence to an investigator being selected who would be fair correct and independent. The claimant submitted her line manager did not fit this description.

132. The claimant stated that Helen Sullivan didn't investigate all her complaints. The claimant submitted that she said she'd look at the other complaints later but she did not investigate them. Further she did not tell the claimant about her interviews with others and they should have been presented to the claim it is part of her so-called investigation and it could have been used by the claimant for her appeal. The claimant submitted the documents were full of errors and they have been hurriedly created by the respondent for the bundle. Miss Taylor had said she knew nothing about the interviews which was truly amazing. The payment said her complaint of 12 January 2022 was not investigated correctly in accordance with ACAS and is therefore void. The claimant said she was not allowed to appeal Helen Sullivan's decision. The claimant said she contacted Helen Sullivan and told her that she was busy and would like to submit the appeal after 11 May 2022 meeting. The claimant said that Helen Sullivan agreed to this. The claimant submitted that the fact that neither Helen Sullivan nor the respondent investigated her complaints against Sarah Minshull, they are guilty of breaching all of the laws and policies set out.
133. The claimant submitted that Mr. Price said she was rude. His witness statement contradicted this. Mr Loxley's e-mail about the claimant was never brought to her attention and the claimant submitted it was created by the respondent for the Tribunal bundle. The claimant stated that Mr. Loxley is a violent racist man who has racially abused more than one minority ethnic employee in the workplace including Maureen Wilson. The claimant said she suffered more than one verbal racial attack from him and was harassed by him and he was never disciplined her complaint was not investigated.
134. The claimant said that Georgia Stayning's described her as rude and spoke to her in a demeaning tone and felt it was difficult to communicate with the claimant. The claimant submitted it was the first time she'd ever heard about this. The claimant asserted that every time Miss. Staynings communicated with her was when she was racially abusing her and stated she was fully working in unison with John Loxley and Mr. Price to bully people who they don't like namely minority ethnic people. She asserted that Georgia had also bullied Maureen Wilson. The claimant said her grievance against this person was not investigated. In respect of Trevor Bedford the claimant said he managed to get out of the Tribunal hearing by submitting a sick note. The claimant submitted he was another racist bully not investigated by the respondent. In respect of Georgia Patterson, the claimant said she knew what she saw and heard. In respect of Tanya McGougan the claimant submitted that she lied to the Tribunal in respect of the dismissal of the claimant. She gave an elaborate explanation with regards to her probationary which included the reason for her immediate dismissal which the claimant contended was false. The claimant submitted that

she'd been terminated because Miss MCGougan wanted to prevent her from applying for the internal job role as a coach and on returning to work following annual leave she was spoken to on 27 of May 2022 with just 40 minutes notice of dismissal. Sarah Minshull described by the claimant as a racist troublemaker who was a comparator did not receive any disciplinary action or dismissal for her behaviour. The claimant was critical of Chardine Roberts her line manager who had extended the claimant's probationary period and stated it was not normal to have done so so many times; if a person can't do a job they would not be in the job for so long doing the job. The claimant relied upon the e-mail sent dated 9 May 2022 page 837-839 by Chardine requesting the claimant to assist with prescriptions. The claimant contended it annihilated the whole of all Chardine's Roberts case that she couldn't do the role. The claimant submitted she was constantly treating the claimant unfairly. The claimant submitted she was never allowed to put her evidence against Sarah Minshull to the respondent. In respect of Joanna Williams, the claimant submitted she had overheard what Joanne Williams had said that she was going to set up an action plan and make the claimant fail and then terminate her. The claimant said that is what the respondent worked at from the moment she started working. The claimant submitted that the respondent wanted her to leave the organisation. She stated that Joanna Williams sent an e-mail to Chardine Roberts without her knowledge; speaking about her and issues; she was only four weeks into the role because she wanted the claimant out. The claimant also submitted her workplace skills and knowledge are to a much higher level than all of the staff she was working with including Joanna Williams and she detected that from the start. The claimant submitted the Tribunal should be able to see with this hearing the calibre of people who are running this charity organisation; they're in charge of some of the most vulnerable people in our society and it is truly disturbing.

135. The Tribunal read the claimant's written submission and asked the claimant if she had anything she wished to add. The claimant submitted that on 11 May 2022 it does say (page 625) there would be a follow up meeting. Further the claimant challenged that she had not been dishonest at paragraph 12 of the respondent's submission. She said "I forgot about the lawyer that represented me before". The claimant said the respondent fabricated the documents.
136. The respondent further submitted that the reference to another meeting at page 625 was to discuss the claimant's other complaints.

Credibility

137. The Tribunal had some grave concerns about the credibility of the claimant's witness evidence. Judge Maxwell noted in his judgement dated 31 January 2025 (paragraph 7 of the order) that the claimant had said she did not collect the bundle provided by the respondent's solicitor from the Tribunal in January 2025. Later in that hearing, Judge Maxwell noticed the claimant was referring to two different paper bundles; "the one given to her this morning for the preliminary hearing and another larger volume which appeared to have post it notes attached." The Judge asked the claimant about the larger bundle and it became apparent this was the physical bundle sent by the respondent to the Tribunal in January which the claimant had previously denied receiving.

138. The claimant's evidence to this Tribunal is that the respondent had fabricated allegations that there was an issue with her performance as well as she had interpersonal problems with people at work. The claimant was taken to various notes of meetings including one to ones with her manager when issues were raised about her performance and relationships with colleagues throughout the bundle to which the claimant replied the respondent was just "*nick picking*" issues and the issues raised were "*petty*" matters. The claimant contended that hearing transcripts and investigation notes were fraudulent. In respect of the probationary disciplinary meeting she did not accept that they were accurate and she had never signed them. When asked if she had made her own notes she stated no because she trusted them to make the notes. However, when asked whether she had identified the inaccuracies in the notes and informed the respondent, the claimant said she had not. She could not explain why she had failed to do so. Following a short break and after concluding her case, she then told the Tribunal that she remembers now that she did edit some notes and send them back. The claimant provided no further details about this until day 7 when the claimant stated she amended the notes of her grievance investigation meeting with Ms. Sullivan at page 562-3. When Ms. Sullivan was asked by the claimant that she amended notes provided by Ms. Sullivan and signed them; Ms. Sullivan had no recollection of amendments by the claimant. The claimant disputed that she was given many opportunities to improve her performance. The claimant did not agree to this despite the fact that the respondent had extended her probation period on a number of occasions see pages 476,574 and page 606. The claimant's case was that all extensions to the probation were part of the original plan to dismiss her. The Tribunal did not find this was credible; there was no obligation by the respondent to have extended the claimant's probation if it did not wish to assist her. Further, although the respondent had concerns about the claimant's timekeeping and falling asleep at work it did not use or rely upon those matters to discipline her. The Tribunal formed the clear impression that the respondent was caring and supportive and tried very hard to bring the claimant up to the required standard.
139. The Tribunal found that the claimant's evidence was inconsistent and confused. The claimant asserted in her witness statement that Joanna Williams was her line manager but this was inconsistent with her assertion in her claim form at page 11 where she described Jo Williams as the Central and West team leader. Further at pages 429 and 431 dated 30 of December 2021 she accepted that Jo Williams was not her line manager. At times the claimant said the prescription work was "not rocket science", on other occasions she suggested it was "very complicated". She alleged there was a block on black employees being promoted in the respondent's organisation and in response to Mr. Price suggesting he had worked up to the position to Team leader the claimant said "*yes its easy when you're white.*"
140. The claimant alleged that in December 2021 para 2.2.1 page 228 that Joanna Williams had told Diane Kelly she was in effect seeking to remove the claimant but the claimant did not raise this issue or Diane Kelly in the appraisal dated 30 December 2021 (page 429) or her complaint dated 11 January 2022 (page 448). In fact on 30 December 2021 the claimant was stating she enjoyed being managed by both Chardine Roberts and Joanna Williams (see page 429).

141. The Tribunal found that the claimant tended to exaggerate her evidence and the Tribunal formed the view that the claimant made up some of her evidence as she went along. For example under cross examination the claimant asserted that Ms. Staynings had shouted and raised her voice at her during an incident on 21 February 2022. However the claimant's email of the same date at page 498 suggests that Ms. Staynings had disrespected the claimant but did not contain any suggestion that the claimant had been shouted at. When cross examined about this inconsistency, the claimant stated that she "*now remembered this was the case*".
142. Under cross examination the claimant tended to repeat the same question to a witness when she had not received the response she wanted. She ignored guidance given by the Judge, that she was unlikely to achieve the answer she wanted by asking the same question again. The Judge asked the claimant to focus her questions on the list of issues and identified for the claimant each of the issues she had made against each witness. The claimant ignored this guidance choosing to ask her own questions which did not pertain to the list of issues. In the circumstances the Judge put all relevant allegations to the witnesses to ensure that the claimant's case was covered.
143. The claimant stated she was dismissed as a result of informing Chardine Roberts that she was applying for an internal job as a counsellor. Although the claimant had stated in her witness statement that she informed Chardine Roberts on 25 May 2022 that she was going to apply for an internal role, she had not asserted in her witness statement (as she asserted in cross examination) that she told Chardine Roberts to inform Ms. McGougan about this or that Ms. McGougan dismissed the claimant to prevent the claimant from applying for an internal role.
144. A number of the claimant's allegations (contained in the list of issues) were not addressed at all in the claimant's witness statement. For example the allegation (set out pages 229 to 231) paragraph 2.2.9; 2.2.11; 2.2.13; 2.2.15; 4 (breach of contract). The claimant stated that her statement "*was already 18 pages so how long did it need to be*". The claimant also stated in cross examination where evidence had not been included in her statement about behaviours of others she had referred to "hostile environment" which should cover specific allegations. In respect of her breach of contract claim the claimant accepted she did not mention it in her witness statement but said "*there were far more serious matters to include*". The Tribunal determined that these issues were not in reality considered that serious by the claimant otherwise she would have included them.
145. Judge Faulkner had set out very carefully in the list of issues the relevant actual or hypothetical comparator. The claimant did not provide any positive case about these. The Judge asked her about this she was comparing herself with others in the workplace saying they were believed over her and relied upon Sarah in most cases as her comparator. The Employment Judge asked the claimant why she felt she was being treated in the way she alleged based on her race. The claimant stated that there was another black afro Caribbean woman employed by the respondent who said she was treated badly too but the claimant had never mentioned this person in her pleaded claim or witness statement and

initially she refused to identify who this person was; later in the case she named the person as Maureen Wilson.

146. It was put to the claimant she did not appeal the grievance outcome prepared by Helen Sullivan. The claimant stated in evidence (not included in her witness statement) that she obtained an extension of time to appeal. The Judge asked the claimant details about this. The claimant stated it was *"in a phone call with Helen or probably Gaynor."* The Tribunal had no confidence that this was accurate evidence. The claimant contended that following the probationary disciplinary hearing on 11 May 2022 she was promised a further meeting. This offer did not appear in the meeting notes and the Tribunal concluded that the claimant fabricated this evidence.
147. The claimant's conduct of the case was aggressive and hostile. She was warned on a number occasions by the Judge that she could be assertive in her questioning but that the questioning should remain civilised. Further she was warned that she should not cut across the witness whilst the witness was answering the question but could wait, and follow up with another question. The claimant ignored this guidance and constantly cut across the witnesses whilst they were answering the question put by the claimant. The claimant's tone of questioning of the witnesses was unnecessarily hostile. In the course of questioning Ms. Staynings (who appeared weary after 55 minutes of cross examination and requested a break,) the claimant shouted *"yes you want a break now.."*. As the witness stepped away from the witness table, the claimant continued to shout *"you're an abuser"*. The Judge had to inform the claimant to stop. The claimant also cut across the Judge as the Judge tried to give her guidance.
148. The Tribunal determined that the claimant had fabricated some of her factual allegations and treatment. The reality appeared to be that the claimant did not follow instructions, she did not accept that managers should enquire what she was doing and reacted badly to any criticism; she informed the Tribunal that her skills were better than Joanna Williams her trainer. The Tribunal found the claimant to be an unreliable witness and fundamentally dishonest.
149. Mr. Price was an extremely gentle, polite and honest witness. Despite hostile questioning by the claimant he remained calm and polite. The claimant had to be told by the Judge to stop interrupting Mr. Price as he tried to answer her questions and to ensure that the questioning remained civilised. He had been employed by the organisation for 10 years and never had a complaint against him. He spoke of his personal experiences of being fostered by Afro Caribbean parents and had a fantastic experience being brought up by them.
150. Mr. Loxley was a genuine and truthful witness who explained his management experience of the claimant had been challenging when she worked in his area. She was difficult and refused to take instructions.
151. Georgia Patterson was a credible witness. Although the claimant accused her of being a liar, the Tribunal found she had no reason to lie. Her role was to promote the respondent and to say positive things about it; she was unaware of employees/employer issues; her contact with the organisation was surface level and could not have commented about the claimant's employment status and

clarified in evidence in chief that she was actually unaware of the claimant's race.

152. Ms. McGougan was also a credible witness and remained very calm when the claimant aggressively questioned her "*you are a racist*". The Tribunal found that her decision to dismiss the claimant was based on the evidence of the claimant's line manager Ms. Robert and taking into account mitigation provided by the claimant.
153. Ms. Sullivan who investigated the claimant's grievance was honest and professional. She confirmed that she had interviewed all those named in the claimant's grievance and concluded on the information received that the grievance should not be upheld. She did not consider that there was evidence that Sarah Minshull had acted in a way that breached the code of conduct. Under cross examination the claimant asked Ms. Sullivan on a number of occasions why she failed (following interviewing individuals as part of the grievance) not to inform the claimant about the interviewees' responses to her allegations so to get the truth. Ms. Sullivan maintained she was there to consider whether the grievance should have been upheld by taking all the information into account; it was not a question of asking what the claimant had said to the interviewees comments. Ms. Sullivan also clarified that the claimant had not at any time either in her written grievance dated 11 January 2022 or during her interview on 23 March (the claimant signed the notes on 28 March) suggested that she had been subject to racial discrimination. The claimant was critical of Ms. Sullivan for failing to view Mr. Bedford's investigation of her grievance. Ms. Sullivan stated in evidence that it was not appropriate for her to view the notes of the previous investigation (conducted by Mr. Bedford which the claimant was unsatisfied about) so to maintain her independence; she considered reading that information may be leading or misleading. The Tribunal concluded that Ms. Sullivan took her role seriously and was careful to analyse all the information she obtained in the grievance investigation before reaching a conclusion not to uphold the claimant's grievance.
154. Chardine Roberts was credible and honest. The Tribunal found her to be entirely genuine. She had interviewed the claimant for her job along with Joanna Williams and the claimant was appointed following the interview with them. She described her race as mixed race; her mother is black afro Caribbean and her father is white British. She stated that the claimant was the same age as her aunties and she would never disrespect a woman in the way the claimant described. Further she had a positive experience working for the respondent and had been employed with them for 10 years. She stated that she did try to support the claimant to reach the appropriate standard by offering support in 1:1s and raising any performance concerns (see page 367;478; 428; 417) and extending the probationary period. The claimant had some sickness so some extensions to her probation were put in place so that the claimant had a fair opportunity to improve her performance. In response to the claimant's suggestion that criticisms of her performance were fabricated as evidenced by a text requesting the claimant to cover prescriptions on 9 May 2022 (see page 837-839), Ms. Roberts stated that the claimant was still employed by the respondent in May 2022 and was paid to do a role; there was no one else available to do prescriptions that day; her contingency plan was that if the claimant made mistakes there was a safety net in that Gareth and Jo would be

checking the scripts. Ms. Roberts described the service users as mainly homeless rough sleepers who could be both physically and mentally unwell. It was essential to the service users to obtain their scripts in a timely manner so that a service user who may have a physical disability is able to get to a pharmacy and collect the medication before the pharmacy closed. Further where there were a number of service users in reception waiting for scripts they could get frustrated. When the prescriptions went missing whilst the claimant was working on the scripts, it was a serious issue because the scripts concern controlled medication. This had not happened in the 10 years she had been employed by the respondent. She had no responsibility to formally investigate the claimant's formal concerns; she was not instructed to do so and there could be a conflict of interest if she did so because she managed a number of individuals including John Loxley, Georgia Staynings, and Sarah Minshull and had a close working relationship with Carl Price. She spoke to others informally about the claimant's concerns.

155. Joanna Williams had over 30 years' experience of prescriptions and ten years employment with the respondent. The Tribunal found her to be a credible and honest witness. She acted as the claimant's trainer on prescription work. She told the Tribunal she had concerns about the claimant's ability to complete prescriptions in a timely fashion and had raised these concerns directly with the claimant when a GP contacted her chasing for a script. She was also obliged to inform the claimant's line manager (the claimant was in her probation) of any performance concerns. She stated that usually within a period of 4 weeks an employee is competent in prescriptions without support and could be competent in both prescriptions and batch prescriptions in 2 months. It was therefore unusual that the claimant had not been competent in prescriptions after 5 months. She had interviewed the claimant along with Chardine for the post with the respondent; on their recommendation the claimant was successful. She described herself as Black Afro Caribbean and that the work environment was supportive. She described a diverse workforce at the respondent's organisation; colleagues brought in and shared Afro Caribbean food with each other and that she had been encouraged and supported by managers to seek promotion but at the moment she had chosen not to make any applications.
156. Ms. Taylor HR officer. She was honest and credible. She was very clear that she was an adviser and not a decision-maker. She would not be drawn by the claimant into agreeing she played any other role in the process other than facilitating the grievance process.
157. Ms. Staynings was honest and credible. The claimant was particularly aggressive towards this witness as the Tribunal sets out above. Following a break the Judge again warned the claimant about her manner in questioning and the claimant stated she understood.

Conclusions

Direct race discrimination

158. The claimant describes her race as black Afro Caribbean. The claimant made a number of direct race discrimination allegations against the respondent. The Tribunal has set out below the comparators identified by the claimant as set out

in the case management order of Judge Faulkner dated 15 December 2023. However at the hearing the claimant provided very limited evidence about the treatment of her alleged comparators. The claimant's evidence about comparators was limited to her allegation that the respondent preferred the respondent's witnesses rather than her where there was a dispute about her performance and her/their behaviours. The burden of proof rests upon the claimant to establish facts from which the Tribunal could conclude that she was treated less favourably on the grounds of her race.

158.1 Did the respondent do the following things:

158.1.1 In December 2021 by Joanna Williams the claimant's team leader told another team leader, Diane Kelly, that on performance grounds she was going to extend the claimant's probation, prepare an action plan for her and ensure the claimant failed it so that her employment would be terminated.

Comparator Sarah Minshull, Paige and Chris Pinnock

The Tribunal found that the claimant did not establish this allegation. The Tribunal found Ms. Williams to be an honest witness. Joanna Williams' evidence which was accepted by the Tribunal was that she was not the claimant's line manager and it was not in her remit to make any of these statements. On the balance of probabilities the Tribunal found it was unlikely that Ms. Williams made such a comment. Further in respect of the wider context, Joanna Williams interviewed the claimant along with Chardine Roberts for her post with the respondent and as a result of that interview the claimant was appointed. The claimant's evidence was that she heard Joanna Williams say this comment to Diane Kelly. The claimant had opportunities to raise this concern about Joanna Williams in her 1:1s with her line manager but this allegation was never mentioned by the claimant in her meeting with her line manager, Chardine in December 2021 or in her complaints made in January 2022. This was not raised until 10 February 2023 (see page 786). The Tribunal having heard the evidence of Ms. Williams who the Tribunal found to be an honest witness, determined that Ms. Williams did not say this and in fact the claimant fabricated this allegation against Ms. Williams. This allegation fails and is dismissed. In any event it is out of time.

158.1.2 From December 2021 by Ms. Williams planned to dismiss the claimant

Comparator Ms. Minshull, Paige, Mr. Pinnock

The Tribunal found that the claimant did not establish this allegation. Miss. Williams was a senior administrator in the organisation and not the claimant's line manager so that dismissing or planning to dismiss the claimant was not in the remit of her role. The claimant stated in her evidence that nevertheless Joanna had an input. Joanna Williams trained the claimant on prescription work and her focus was ensuring that the claimant was properly trained in this role. She was required to raise any concerns with the claimant's manager that she became aware of in respect of the claimant's performance. Joanna Williams was one of the individuals along with Chardine Roberts who had interviewed the claimant for the job which the claimant had succeeded in obtaining. The

Tribunal found there was no evidence at all that Ms. Williams planned to dismiss the claimant from December 2021 or at any time. In fact Ms. Williams was unaware of the report prepared by Ms. Roberts for the probationary disciplinary hearing for the claimant. The Tribunal having heard the evidence of Ms. Williams who the Tribunal found to be an honest witness, determined that Ms. Williams did not say this and in fact the claimant fabricated this allegation against Ms. Williams. This allegation fails and is dismissed. In any event it is out of time.

- 158.1.3 From 30 December 2021 by Chardine Roberts the claimant's line manager, established an action plan for the claimant and in due course extended her probationary, without consulting with the claimant beforehand about the issues addressed in the plan and giving her the opportunity to improve.
Comparators the other administrators employed in the same locations as the claimant

The Tribunal was not satisfied that the claimant was placed on an action plan from 30 December 2021. The Tribunal found that the claimant was placed on an action plan on 7 February 2022 (see page 477) in accordance with the evidence of Ms. Roberts and the contemporaneous documentation noting a starting date of the action plan as 7 February 2022. The Tribunal found that Ms. Roberts informed the claimant in December 2021 that she would extend the probationary period and would be putting the claimant on an action plan but she met with the claimant again on 11 January 2022 (page 442-444) before placing the claimant on the action plan on 7 February 2022. The claimant was placed on an action/development plan in the same manner as any other new employee who was underperforming and her probation period was extended. Chardine Roberts was a supportive manager as the claimant conceded on 30 December 2021 that she enjoyed being managed by Chardine and has "*always been very supportive.*" In the 1:1s conducted by Chardine with the claimant, Chardine raised concerns with the claimant about her performance (see pages 432,423,424,417). The Tribunal found that Ms. Roberts alerted the claimant to areas of concern during her probation period and the claimant was given time to improve her performance prior to being placed on the action plan. The Tribunal rejected the claimant's evidence that the concerns about the claimant's performance were fabricated; the contemporaneous documentation which the Tribunal found to be genuine evidenced that the claimant was not performing to the required standard along with the credible evidence of Joanna Williams. The claimant was warned in December 2021 that she would be put on an action plan but this was only implemented until 7 February 2022. The Tribunal was not provided with any evidence from the claimant about administrators who may have been in similar/same circumstances as herself. The Tribunal found the claimant had failed to establish the facts for this allegation. In the circumstances the allegation fails and is dismissed. In any event it is out of time.

- 158.1.4 On or around 4 April 2022, by Tanya McGougan the claimant's senior line manager adopted the falsehood created by Miss. Williams in relation to the claimant's performance by sending the claimant an e-mail informing her that she had failed to complete the action plan and had thus failed her probation;

Comparators the other administrators employed in the same locations as the claimant

On 4 April 2022 the claimant was invited by Ms. McGougan to a disciplinary probation hearing (page 589-590). The invitation was based on an investigation conducted by the claimant's line manager, Ms. Roberts. The claimant was informed she could be accompanied at the hearing and could prepare a statement for submission. The Tribunal was not satisfied that there was a falsehood in regard to the suggestion that the claimant's performance was below standard. The report of Ms. Roberts was based on evidence. For example in respect of the timeliness of producing scripts, Ms. Roberts analysed the timing of an email landing in outlook requesting a script with the time it took the claimant to print the prescription. This evidence was adduced by Ms. Robert from the system. It showed where the claimant was given lee way of up to 20 minutes to produce a script (the usual standard was 5 to 15 minutes) she could take up to 5 hours and 5 minutes to print the script (see page 514) and was producing a number of voids (see page 515). The invitation by Ms. McGougan to a probationary disciplinary hearing was based on Ms. Roberts report which evidenced cogent and serious concerns about the claimant's performance and behaviours which were indicative that the claimant had failed the action plan and consequently her probation. However the invitation letter made clear to the claimant that the meeting was to consider whether she failed successfully to complete her support and action plan and probation. It further stated that *"at the hearing you will of course be given an opportunity to explain your version of events."* Ms. McGougan invited the claimant to attend a disciplinary probation meeting based on the evidence of Ms. Robert's report but had not pre-determined the case or adopted any falsehood. This allegation fails and is dismissed. In any event it is out of time.

158.1.5 On or around 4 April 2022 by Miss. McGougan reached the conclusions referred to above without giving the claimant an option to improve;

Comparators the other administrators employed in the same locations as the claimant

The claimant was on probation for 6 months and she was provided with a number of extensions to her probationary period; due to her sickness absence and outstanding complaints the probation period was extended; this gave the claimant a further opportunity to reach an acceptable performance standard; she was given regular 1 to 1s with her manager who in the course of these discussions raised concerns about the claimant's conduct and behaviours; see the 1:1s (pages 432,423,424,417); the claimant was placed on an action/support plan on 7 February 2022 to 4 March 2022. The claimant received additional training on request for prescriptions with Gareth and Chris Pinnock. The Tribunal rejects the claimant's assertion that Ms. McGougan reached conclusions without giving the claimant an option to improve; the claimant was given a number of opportunities to improve her performance. This allegation fails and the allegation is dismissed. In any event it is out of time.

158.1.6 On or around 29 March 2022 Miss Roberts stated untruthfully or inaccurately in an investigation report at the claimant struggled to

generate prescriptions for clients quickly enough and had lost some prescriptions.

Comparator Ms. Minshull

Ms. Roberts stated in her report that the claimant was struggling with generating prescriptions for clients quickly enough based on an analysis of the email traffic from the system (see page 514). One prescription took the claimant 5 hours and 5 mins whereas 5 to 15 minutes would be the norm. The claimant was able to do the work on occasions as indicated by her ability to complete a script in 8 minutes but a number of scripts were produced in an untimely manner. Ms. Roberts assertions in her report were based on evidence obtained from the system. In respect of the lost prescriptions at page 583 Ms. Roberts informed the Tribunal that missing scripts was a serious issue; it had never happened in her 10 year tenure with the respondent. She even visited site to see for herself where the scripts had gone. She stated that she also looked at CCTV. The claimant sought to blame Ms. Minshull. The scripts were identified as missing on 10 March by the claimant. The claimant was working on scripts on 9 March as well. Ms. Minshull was not in work on 9 and 10 March. The respondent reached a reasonable conclusion that the claimant was responsible for missing scripts on 10 March because she was responsible to carry out that task on that day and the previous day. The Tribunal determined that Ms. Roberts stated truthfully and accurately, following her investigations, that the claimant struggled to generate prescriptions for claimants quickly enough and had lost some prescriptions. This allegation was not established by the claimant on the facts; it fails and is dismissed. In any event it is out of time.

158.1.7 In March 2022 by Georgia Patterson a senior manager from another office, talked about the termination of the claimant's employment in a corridor at the office where the claimant was based where others could hear what was said

Comparator Ms. Minshull

The Tribunal rejected the claimant's allegation. Georgia Patterson had no recollection of ever having a conversation with or about the claimant and did not know the claimant nor could she have portrayed her in a negative way. She had no knowledge of the claimant's employment status nor would her role have required her to have knowledge or to discuss the same. She had no knowledge of the claimant's race. Georgia Patterson's role as a Partnerships and Communications Officer was facilitating partnership meetings and organising PR events. Her contact with the respondent was surface level. The Tribunal determined in accordance with her evidence that Georgia Patterson had no knowledge of the claimant's situation. The Tribunal found this allegation was fabricated by the claimant. The allegation fails and is dismissed and is out of time.

158.1.8 Permission to add a complaint refused

158.1.9 On or around 21 February 2022 by Georgia Stayning's continue to scan prescriptions in a manner contrary to that indicated to her by the claimant

Comparators Ms. Minshull, and other administrators employed in the same location as the claimant

The Tribunal preferred the version of events from Georgia Stayning's namely that she offered to assist the claimant on a busy day and began to scan through some of the voids to her midway through. The Tribunal found that the claimant said in a rude tone that she was scanning the prescriptions incorrectly (see the contemporaneous email of Ms. Staynings page 499) . Georgia Staynings asked the claimant exactly what she was doing was incorrect. The claimant told her to give them back and she would do it; she sent the last scanned item to the claimant and gave the voids back to her. From the evidence Georgia Staynings was scanning the scripts in a different view range (perhaps upside down) but the scripts could be rotated by the software. Georgia Staynings later went and sought advice from a colleague as to the correct way to scan prescriptions and was told it didn't matter which way they were scanned as the scans can be rotated in the computer software after they have been scanned. Ms. Staynings was unhappy about the way Peaches had spoken to her and found her to be very rude. Ms. Staynings asked Carl Price team leader to speak to the claimant.

The Tribunal found that once the claimant had raised with Ms. Staynings she was not doing the scanning scripts correctly, Ms. Staynings gave them back to the claimant. The Tribunal did not find that this allegation was established by the claimant and was not persuaded that this allegation had anything to do with the claimant's race whatsoever. The allegation fails and is dismissed. It is out of time.

158.1.10 On the same dates by Miss. Stayning's falsely accused the claimant of not speaking with respect, shouting at the claimant whilst doing so "until you learn to speak to me with respect I will not speak to you"

Comparators Ms. Minshull and other administrators employed in the same location as the claimant

The Tribunal preferred Georgia Stayning's account. The claimant in a rude tone informed Georgia that she had scanned the prescriptions incorrectly and had not followed process. Ms. Staynings gave the claimant some scripts back. The claimant began to raise her voice. Georgia did not raise her voice but told the claimant that she considered the way she was speaking to her was rude and that she had been trying to help her to make things easier. She told the claimant that if she was going to talk to her in an inappropriate manner than not to talk to her. This account of the conversation is supported by the claimant's discussion with Ms. McGougan who noted that the claimant said on the day (page 502) that Ms. Staynings asked the claimant not to be rude to her and unless the claimant spoke to her better then the claimant should not speak to her unless for operational purposes. She felt this was not the first time the claimant had been rude to her. The claimant did not raise at the time Georgia Staynings was shouting at her. The Tribunal did not accept the claimant had established this factual allegation. This allegation fails and is dismissed. It is out of time.

158.1.11 On or around 11 May 2022 by Miss Stayning's told the claimant that she was not to use an upstairs room which the claimant was already aware of

Comparators Ms. Minshull and other administrators employed in the same location as the claimant

The Tribunal preferred Georgia Stayning's version of events she did not shout at the claimant. She did try to catch the claimant's attention when she saw her by the lift. Both parties agreed that Ms. Staynings was some distance from the claimant. The Tribunal found Ms Staynings called out to the claimant to wait and explained her that they were not supposed to use the second floor that day. The claimant told Georgia that she was aware and had seen the relevant e-mail which had been sent out about the same. Under cross examination the claimant put to Ms. Staynings that she was also at the debrief meeting when this issue was discussed. Ms. Staynings said she did not remember whether the claimant was present or not at the meeting but had been told by Ms. Roberts to put the word around about the non-use of the room. The Tribunal did not consider Miss. Staynings informing the claimant about the non-use of lift/second floor had anything whatsoever to do with the claimant's race. She was simply informing the claimant about the instruction that had been given by Ms. Roberts as she was required to do. This allegation fails and is dismissed. The allegation is out of time.

158.1.12 On the same day by Miss Stayning's shouted at the claimant are you going up to the large room you are not allowed to go up there
Comparators Ms. Minshull and other administrators employed in the same location as the claimant

The Tribunal did not accept that Georgia shouted at the claimant. As set out above she informed the claimant about the instruction that had been given. Insofar as Ms. Staynings raised her voice, the parties agreed that Ms. Staynings was some distance away and wished to alert the claimant to the fact she can not use the room. The conduct had nothing whatsoever to do with the claimant's race. Ms. Staynings was alerting the claimant to the fact she should not use the room in accordance with the instructions of Ms. Roberts. This allegation fails and is dismissed. This allegation is out of time.

158.1.13 On 21 February 2022 by Carl Price stand over the claimant while she was working on reception;
Comparator Ms. Minshull

The Tribunal rejected the suggestion that Mr Price stood over the claimant while she was working at reception. The Tribunal accepted the evidence of Mr. Price who was credible witness that Ms. Staynings had instructed the claimant to upload to the system the voids. Mr. Price having been informed by Miss Stayning's of the claimant failing to carry out a management instruction he went to speak to the claimant by standing at the side of the reception desk. He provided a contemporaneous email of events at page 501. The claimant dismissed his email under cross examination as "completely fabricated". He informed the Tribunal that he stood at the side of the desk so that he would not be overheard as he spoke to the claimant. The allegation of Mr. Price standing over her was not included in the claimant's contemporaneous complaint at page 502 or in her later complaint about Mr. Price in May 2022 page 647 or in her witness statement. The Tribunal found that Mr. Price's account was credible.

The Tribunal determined that the claimant had fabricated this allegation against Mr. Price. The allegation fails and is dismissed.

158.1.14 On 21 February 2022 by Mr. Price stated to the claimant that she had made a lot of mistakes, that's questioning her ability to do her job and stated that she can sometimes appear to be rude because of the way she speaks to people;

Comparator Ms. Minshull

The Tribunal rejected that Mr Price informed the claimant that she made a lot of mistakes questioning her ability to do her job. The Tribunal preferred the evidence of Mr. Price (set out in page 501). His evidence was that following being told by Georgia Stayning's about the claimant the uploading change forms for some scripts which had been completed incorrectly by the claimant, he informed the claimant to upload the documents as Miss. Stayning's had requested. The Tribunal found that the claimant had called Mr. Scott a liar following his assertion that the claimant spoke to people and can come across as abrupt. The claimant then stated to Mr. Price "your people are the only ones that think that". When asked to clarify what "your people" meant claimant would not explain. Mr. Price spoke to the claimant as a Team Leader to ask her to carry out a management instruction which he was entitled to do. He did not question her ability to do her job. The claimant was rude to Mr. Price and he raised the issue with her that she could come across as abrupt. In the circumstances and taking account of the claimant's behaviour namely being resistant to follow management instructions he was entitled to do so. The conduct of Mr. Price as found by the Tribunal was in accordance with his role as a Team Leader and was justified. The claimant was treated in the way set out because she was resistant to taking instructions and was rude. The treatment had nothing whatsoever to do with race. This allegation fails and is dismissed.

158.1.15 In or around February 2022, by John Loxley sit in the administration room when the claimant was working there;

Comparator Ms. Minshull

Under cross examination, the claimant accepted that Mr. Loxley was entitled to sit in the administration room. The Tribunal accepted the evidence of Mr Loxley that he may have sat in the administration room where the claimant was working because his role required him to do so from time to time and at this time he was hot desking. This had nothing whatsoever to do with the claimant's race. The allegation fails and is dismissed. The allegation is out of time.

158.1.16 Permission to add complaint is refused

158.1.17 In or around February 2022 by Mr Loxley ask Frances to deal with a different type of prescription, instead of the claimant doing so

Comparator Ms. Minshull and Frances

The claimant did not detail this allegation in her witness statement but referred at paragraph 3.3 of her complaint submitted on 18 May 2022 (page 648) where she set out the allegation. The Tribunal preferred the version of Mr Loxley set out at page 834 (who was an honest and credible witness) who stated that the claimant did not know how to raise a custom script to add incremental amounts of Buprenorphine titration script. Girly re-wrote the change form so she could raise a standard script. The claimant printed the script incorrectly and the script had to be

voided. The claimant refused to admit she did not know what to do. An argument ensued and Mr Loxley asked the claimant to stop doing scripts and go onto reception and swap with Fran to do scripts but the claimant refused. Mr. Loxley's evidence to the Tribunal (which it accepted) was that he wanted Frances Lawlor to take over so they could clear the backlog as they had a lot of service users waiting which was causing disruptions in reception. Initially the claimant refused Mr Loxley's request and then shouted at Mr Loxley stating she knew what she was doing and to let her do it. Mr Loxley told the claimant she needed to do what he was asking her to do. Mr. Loxley was the manager on site that day and the claimant ignored him. The Tribunal found he did not shout at the claimant. The incident was reported verbally and via e-mail to Chardine Roberts and Tanya MCGougan (page 834). He asked Frances to do the work instead of the claimant because of the errors made by the claimant and the backlog. As the manager on site he was entitled to instruct the claimant to allow a colleague to take over the prescription work due to the mistakes and back log. This allegation fails and is dismissed. The allegation is out of time.

158.1.18 In or around February 2022 Mr Loxley stand over the claimant and shout repeatedly you can't do it you can't do the work get off prescriptions and go on to reception. Let Francis do prescriptions.. If you could do the job you would be able to do it. You would know this is a custom prescription.

Comparator Ms. Minshull and Frances as above.

The Tribunal refers to its findings above. The Tribunal preferred the evidence of Mr. Loxley. He did not ask Frances to deal with the prescriptions because of the claimant's race nor did he shout "*you can't do it you can't do the work get off prescriptions and go onto reception let Frances do prescriptions if you could do the job you would be able to do it. You would know this is custom prescription.*" He wanted Frances Lawlor to take over so they could clear the backlog as they had a lot of service users waiting which was causing disruptions in reception The Tribunal determine that the claimant had fabricated the allegation of standing over her and shouting at her as alleged. This allegation fails and is dismissed. It is out of time.

158.1.19 In January, February March 2022, by Mr Loxley and Miss. Staynings check on the claimant while she was operating the telephones by making dummy calls and creeping up behind her

Comparator Ms. Minshull and Frances

The Tribunal accepted the respondent's evidence that the respondent had an issue with the telephones not being answered. The respondent having received complaints from service users that the phones were not being answered was entitled to check whether calls were being answered. Service users and third parties such as doctors regularly call the respondent and there is a need that such calls are answered and referred to the correct person in the organisation. Mr. Loxley did check the telephone lines in this context, having called the phone it was not answered. He made his way to the room where the phones are located and he could see the claimant. Mr. Loxley noted that the claimant was looking at her personal phone when the phone was ringing. He dialled again and placed a dummy call but was justified in doing so in the

circumstances to check whether the claimant would answer the phone. The claimant did not answer the phone. He entered the room and the claimant said the phone had not been working. He rang the phone again and he could see the line was clearly ringing on the claimant's screen. The claimant stated that the phone had not been working all morning. The claimant did not give any reason to Mr. Loxley as to why she was not answering or why she was on her personal phone. He reported this matter to the claimant's line manager, Ms. Chardine Roberts who raised this with the claimant (see page 481 7 February 2022). The claimant was checked on because she was not answering the phones; that had nothing whatsoever to do with the claimant's race; the claimant was not doing as she should be namely answering the phone. The Tribunal rejected the claimant's suggestion that she was creeped up on by Mr. Loxley or Ms. Staynings. The Tribunal accepted Ms. Staynings evidence that on one occasion she entered the room quietly because the claimant was on a call with a staff member on leave; she did not creep up on the claimant. The Tribunal determined that this allegation failed; the claimant's treatment had nothing whatsoever to do with the claimant's race. The allegation fails and it is dismissed. In any event it is out of time.

158.1.20 On 22 February 2022 by Mr Loxley and Miss Staynings question the claimant about an appointment booking and who gave her permission to make it

Comparator Ms. Minshull and Frances

This allegation was not mentioned in the claimant's witness statement. The claimant relied upon an email dated 22 February 2022 page 506. The email is addressed to Mr. Loxley, Georgia Staynings and Austin Lin and states "*Appointment Booked by me on 3 March 2022: with regards to the above that we have just talked about; I recall talking to Sarah about this appointment. She informed me at the time that she had already booked the appointment. The matter had been dealt with and resolved.*" In her evidence she accepted the issue was resolved. From the evidence of Mr. Loxley and Miss. Staynings, they had no recollection of this incident. The claimant added in her evidence she was "charged at" by Mr. Loxley and Ms. Staynings. The evidence of the claimant was not contained in her witness statement and the Tribunal found the allegation therefore very vague. There was insufficient evidence for the Tribunal to establish any facts from which the Tribunal could conclude any race discrimination. On the face of the email it appeared an innocuous issue. The allegation fails and is dismissed. It is out of time.

158.1.21 On 21 February 2022 by Miss McGougan not take seriously the claimant's complaint about Mr. Price, Mr Loxley, and Miss Staynings taking their side straight away

Comparator Ms. Minshull

The claimant did not make a complaint about Mr Loxley on 21 February 2022. The claimant did complain about Mr. Price and Miss. Staynings on 21 February 2022. The Tribunal found that the claimant tried to call Ms. McGougan during the morning of 21 February 2022 whilst Miss McGougan was attending a hospital appointment. Ms. McGougan telephoned the claimant back and the claimant stated there had been an incident with the team leaders. Miss McGougan informed the claimant

she will be back in the office shortly and catch up with the claimant. The claimant emailed Miss. McGougan (page 496). When returning to the office Miss McGougan bumped into Georgia Staynings who started to tell her about an incident with the claimant that had taken place earlier that day. Miss McGougan suggested to Miss Staynings that she e-mail her about the incident which she did at page 499. Miss McGougan was conscious the claimant had raised issues with her first and therefore wanted to speak to the claimant before she spoke to anybody else. Ms McGougan entered the office and Mr. Price followed her in and began to tell Miss McGougan that he'd had an issue with the claimant that day. Ms McGougan suggested that Mr. Price e-mail her which he did at page 501. Miss McGougan went to speak to the claimant so that she could hear her account. The claimant stated as she had already heard Mr Price and Miss. Staynings version events that Ms McGougan had already made-up her mind. Ms. McGougan assured the claimant that was not true and said that's why she was asking the claimant what happened. The claimant alleged that Miss. Staynings and Mr. Price had been rude to her. The claimant also complained about Sarah Minshull and said that Miss. Minshull was rude to her and showed her examples of some correspondence between her Miss Minshull. Ms. McGougan did not consider the examples showed that Miss. Minshull was rude to the claimant. Miss McGougan listened to the claimant's version of events and considered Miss Stayning's and Mr. Prices account pages 499 and 501 and determined it was a bit of "he said she said" situation and not appropriate at that stage to take any further action as both sides had differing versions of events which was impossible to prove or disprove. She emailed the claimant with a follow up of the discussion and encouraged to try and forge better relationships with the colleagues (page 502). The Tribunal concluded that Miss McGougan did take the incident seriously that is why she listened to what the claimant had to say, as well as inviting Mr. Price and Miss Staynings to provide their accounts by e-mail but ultimately concluded it was "he said she said". Miss McGougan did not take anybody else's side straight away. The Tribunal concluded that this allegations fails and is dismissed. It is out of time.

158.1.22 On 2 February 2022 by Trevor Bedford senior quality manager appointed to investigate the complaint the claimant made about her colleague Sarah Minshull on 11 January 2022 and showed hostility to the claimant by using raised tones, being aggressive and shouting at her "you dare to defy me and what about your behaviour towards Paige and Harj"

Comparator Ms. Minshull or hypothetical comparator

The Tribunal did not hear from Mr. Bedford but accepted his witness statement as a written representation. The claimant did raise a concern about Mr. Bedford in her email dated 22 February 2022 (page 507) this referred to Mr. Bedford being quite hostile towards her and used raised tones. She did not say at this stage he said "*you dare to defy me and what about your behaviour towards Paige and Harj.*" The claimant also made a complaint about Mr. Bedford on 18 May 2022 (page 649); her complaint at this stage was that Mr. Bedford said "*are you questioning my authority*". He dismissed the claimant's complaint see page 512-3

and suggested at page 511 (dated 24 February 2022) that *“I think it is highly likely that Peaches has deliberately misrepresented the events that have taken place to suit her own ends my own recent experience should serve as an example of this I do not believe that anyone interviewing Sarah could fail to be moved by her account of her experiences which have left her feeling traumatised and wanting to leave a job that she loves doing an is good at”*. The Tribunal have not heard from Mr. Bedford and therefore have to approach his witness statement submitted as a written representation with caution. However the Tribunal have already found the claimant to be an unreliable witness and the Tribunal notes that certainly part of this allegation namely “you dare to defy me” was not mentioned by the claimant in two contemporaneous documents. The burden rests upon the claimant to establish this factual allegation. The Tribunal found that the claimant was an unreliable witness and fabricated allegations; in the circumstances and on the balance of probabilities the Tribunal rejected the claimant’s account. This allegations fails and is dismissed. Further it is out of time.

158.1.23 On 2 February 2022 by Mr Bedford refused to discuss all of the issues the claimant had reported

Comparator Ms. Minshull or a hypothetical comparator

The Tribunal did not hear from Mr. Bedford but accepted his witness statement as a written representation. Mr. Bedford was tasked with investigating the claimant’s grievance about Sarah Minshull dated 11 January 2022 at page 447-450. He met with Chardine Roberts the claimant’s line manager on 25 January 2022 (see notes of meeting page 458 459 to 462). Mr Bedford also met the claimant to discuss her complaints on 2 February 2022 (page 471 to 472). He also interviewed Sarah Minshull (page 494 to 495) and one of the claimants colleagues Miss Rani (page 505). At the commencement of the interview of the claimant, Mr Bedford said he would not be going through all the points that the claimant had made in the letter of complaint individually. He explained that the allegations were difficult to prove because there were no witnesses (page 471). The mere fact that Mr. Bedford formed the view that it was not worth covering points where there were no witnesses was not in itself sufficient evidence to establish a prima facie case of race discrimination, in the context that there were no witnesses to the allegations made by the claimant. Mr. Bedford stated at page 471 “I told you that many of the points that you raised would be difficult to prove because there was no-one present who could corroborate your story and as such would be your word against Sarah’s.” The claimant has the burden of establishing the facts to which the Tribunal could draw an inference of race discrimination. The Tribunal finds she failed to do so. This allegation fails and is dismissed. It is out of time.

158.1.24 From 2 February 2022 by Mr Bedford tell the claimant Miss Minshull would not be spoken to as part of the investigation and then later to do so

Comparator Ms. Minshull or a hypothetical comparator

The allegation here was not clear. The Tribunal did not hear from Mr. Bedford but accepted his witness statement as a written representation. Mr. Bedford was tasked with investigating the claimant’s grievance

about Sarah Minshull dated 11 January 2022 at page 447-450. Initially he did not believe there was any merit in interviewing Sarah because it would be difficult to prove the claimant's claims as there was no one present to corroborate them; it would be claimant's word against Sarah's. Secondly by interviewing Sarah it was possible it would make the situation worse for the claimant. However he took HR advice and decided to interview Sarah. The claimant did raise a concern about Mr. Bedford in her email dated 22 February 2022 (page 507) and 18 May 2022 (page 649). He dismissed the claimant's complaint see page 512-3 and suggested that the claimant had misrepresented her account for her own ends. Although Mr Bedford refused to interview initially Sarah Minshull following taking advice he did so. The Tribunal did not consider the mere fact that Mr Bedford did not consider it appropriate to interview Miss. Minshull initially was sufficient material to lead the Tribunal to infer that this was a direct act of discrimination based on race in the context he considered there were no witnesses and it was she said/she said. The claimant's complaint against Miss. Minshull did not expressly state was an allegation of direct race discrimination. Rather the claimant alleged that Miss Minshull had breached the code of conduct. The Tribunal concluded the mere fact that Mr Bedford initially refused to investigate Miss Minshull about a complaint of a failure to comply with the code of conduct with no witnesses was not in itself sufficient to shift the burden of proof. In any event following HR advice he did take the step to interview Sarah Minshull. The Tribunal determined that this allegation fails and is dismissed. The allegation is out of time.

158.1.25 On 2 February 2022 Mr Bedford racially stereotyped the claimant by referring to the way she spoke to people coming across as aggressive

Comparator Ms. Minshull or a hypothetical comparator

The Tribunal did not hear from Mr. Bedford but accepted his witness statement as a written representation. Mr. Bedford was tasked with investigating the claimant's grievance about Sarah Minshull dated 11 January 2022 at page 447-450. The claimant complained about Mr. Bedford at pages 507 on 22 February 2022 and on 16 May 2022 page 649. She did not allege in these documents that Mr. Bedford had racially stereotyped her as being aggressive. Mr. Bedford does not state in his conclusions the word aggressive in respect to the claimant but he sets out what individuals told him about the claimant's behaviour namely that the claimant shouted and got angry. In the circumstances simply setting out what others have said about the claimant cannot amount to Mr. Bedford stereotyping the claimant as aggressive. This allegation fails and is dismissed. The allegation is also out of time.

158.1.26 On 2 February 2022 by Mr Bedford making a decision in relation to her complaints without hearing her account

Comparator Ms. Minshull or a hypothetical comparator

The Tribunal did not hear from Mr. Bedford but accepted his witness statement as a written representation. Mr. Bedford was tasked with investigating the claimant's grievance about Sarah Minshull dated 11 January 2022 at page 447-450. Mr Bedford's investigation consisted of interviewing the claimant's line manager on 25 January 2022 (page

458,459 to 462); interviewing the claimant on 2 February 2022 (page 471 to 472); interviewing Sarah Minshull (page 494 to 495) and one of the claimants colleagues Ms. Rani (page 505). His decision was made on 24 February (page 512) which he submitted to Miss Taylor (at page 511). Mr Bedford did consider the claimant's account because he interviewed her on 2 February 2022. The Tribunal rejected the suggestion that Mr Bedford made a decision in relation to the complaints without hearing the claimant's account. The allegation fails and is dismissed. The allegation is out of time.

158.1.27 In late April or early May 2022 by Helen Sullivan national team manager dismissed the claimant's complaints about Miss. Minshull Comparator Ms. Minshull or a hypothetical comparator

By letter dated 30 March 2022 (page 576 to page 578) Helen Sullivan national team manager provided an outcome to the claimant's investigation. She did not uphold the claimant's grievance. The Tribunal found Miss Sullivan to be a honest and professional and that she had carefully considered the evidence before reaching her conclusion. Her evidence to the Tribunal was that having taken into account the claimant's version of events along with the other witnesses she interviewed she did not consider that the grievance should be upheld. Ms. Sullivan interviewed Ms. Robert on 1 March 2022 (page 516-8); Ms. Minshull on 4 March 2022 (page 520-1); Joanna Williams on 7 March 2022 (page 541-2). The Tribunal found that Ms. Sullivan took her role as grievance investigator seriously; as noted above she went through all of the claimant's allegations and carefully analysed the evidence obtained. Her findings were based on a reasonable investigation of the claimant's concerns. The claimant added further allegations on 23 March 2022 (page 559 to 561). On receipt of the further complaint on the day of the grievance investigation meeting with the claimant, Ms. Sullivan emailed the claimant to inform her she would not be able to include the additional material but would arrange a further meeting with the claimant to discuss. By letter dated 29 April 2022 (page 606) the respondent wrote "you are aware that you have one ongoing grievance and this will not be progressed until you return to work." Ms. Sullivan tried to arrange a further meeting with the claimant on 3 May 2022 (page 616) for 9 May 2022. The claimant was unable to attend on 9 May and in fact the claimant stated she did not want to attend the meeting until after the disciplinary probationary meeting had taken place on 11 May 2022 (page 615). On 5 July 2022 (page 699) the claimant confirmed to the respondent she no longer wanted the respondent to investigate. The Tribunal determined that Ms. Sullivan did not uphold the claimant's grievance against Ms. Minshull following a reasonable investigation into the claimant's concerns. Her conclusions had nothing whatsoever to do with the claimant's race. This allegation fails and is dismissed. This allegation is out of time.

158.1.28 In late April or early May 2022 not allow the claimant to appeal Miss Sullivan's decision

Comparator Ms. Minshull or a hypothetical comparator

The grievance outcome letter dated 30 March 2022 at page 576 to 578 provided the claimant with 5 days to appeal Ms. Sullivan's outcome. The claimant did not appeal. The claimant added to this allegation in her

evidence stating that she was granted an extension to appeal. However the claimant's evidence was extremely vague about this. The Tribunal has noted above that the claimant stated the extension was granted *"in a phone call with Helen or probably Gaynor."* The Tribunal had no confidence that this was accurate evidence and found that the claimant had fabricated the evidence that she was granted an extension to appeal. This allegation fails and is dismissed. The allegation is out of time

158.1.29 On 12 January 2022, 1 February 2022, 15 March 2022 and 23 March 2022 by Gaynor Taylor HR manager Miss Roberts and or Miss McGougan fail to investigate her complaints against Miss. Minshull Comparator Ms. Minshull or a hypothetical comparator

On 11 January 2022 (page 447-450) the claimant made a formal complaint about Miss Minshull and this was attached to the 1:1 notes on 1 February 2022 (page 464). During the 1;1 with Ms. Roberts the claimant complained about Manjit Mahli describing *"a full on attack at the hands of these people and stating they behaved like wolves."* The claimant said sh would write about this in further detail but the Tribunal finds that the claimant did not make a formal grievance about this incident at the time. The claimant said in her witness evidence that she had submitted a further complaint about Sarah Minshull on 15 March 2022. She said in her evidence that she prepared the document page 545 to 546 for a 1:1 meeting. The claimant did not put to the respondent it had actually received the document at page 545-546. The emails dated 16 March 2022 and 17 March 2022 (page 548) indicate a very short catch up with the claimant on 16 March because she was unwell. The email dated 17 March 2022 refers to the claimant thinking about putting in an additional complaint about Ms. Minshull. The email dated 16 March at page 547 notes that the claimant was too unwell to meet Ms. Sullivan about her grievance on 16 March. The Tribunal was not persuaded that the claimant had actually submitted the document dated 15 March to the respondent but finds the claimant had drafted the document as notes for a meeting. On 23 March 2022 the claimant did submit a further complaint page 559 to 561. On receipt of the further complaint on the day of the grievance investigation meeting with the claimant, Ms. Sullivan emailed the claimant to inform her she would not be able to include the additional material but would arrange a further meeting with the claimant to discuss. By letter dated 29 April 2022 page 606 the respondent wrote to the claimant to state "as you're aware that you are have one ongoing grievance and this will not be progressed until you return to work". Ms. Sullivan tried to arrange a further meeting with the claimant on 3 May 2022 page 616 for 9 May 2022. The claimant was unable to attend on 9 May and in fact the claimant stated she did not want to attend the meeting until after the disciplinary probationary meeting had taken place on 11 May 2022 (page 615). On 5 July 2022 (page 699) the claimant confirmed to the respondent she no longer wanted the respondent to investigate.

The claimant's complaint was originally investigated by Mr Trevor Bedford who the claimant was unsatisfied with so the respondent appointed Helen Sullivan (see page 757). Gaynor Taylor was not appointed to investigate the complaints and instead facilitated the

investigations (see pages 507, 508 547). Ms. Taylor's role as a HR advisor was simply to ensure that processes were followed in accordance with the respondent's grievance procedure. Ms. Taylor was clear that her role was not a decision maker and she was never seized of investigating the claimant's grievance. Further Ms. Roberts as the claimant's line manager and Sarah's line manager was conflicted to investigate the grievance and was never instructed to do so. Ms. McGougan was not tasked to investigate the complaints either. The Tribunal has found that Ms. Sullivan conducted a reasonable investigation of the claimant's complaint as set out above. This allegation fails and is dismissed.

158.1.30 From 25 January 2022 by Ms. Roberts and Miss McGougan failed to investigate the claimant's complaints about Paige, Harjit Sanja and Manjit Mahli:

Comparator Hypothetical comparator

The claimant's line manager was interviewed by Mr. Bedford on 25 January 2022 (page 458) and was asked by Mr. Bedford about any friction with the claimant and team members. She mentioned a fall out between the claimant and Harjit and Paige. The claimant did not actually complain about Paige, Harjit or Manjit on that day. On 16 November 2021 (page 416) the claimant was asked by Chardine about Paige and Harjit – "ok and not too bad". The claimant raised in a 1:1 on 1 February 2022 (page 464) that the incident took place on 25 January 2022 which had affected my well-being she said she suffered a "full on attack at the hands of these people they behaved like a pack of wolves who descended upon their prey" the claimant stated in the 1:1 that she spoke to Tanya McGougan about what took place and she launched a second investigation. However this assertion was not put to Ms. McGougan in evidence. Ms. Roberts told the Tribunal that she informed the claimant that if she wished to complain the claimant would need to put in a written complaint. It is noted that the claimant said she would write about this but did not. There was no evidence that the claimant actually submitted any complaint about Paige, Harjit or Manjit to be investigated. This allegation fails and is dismissed.

158.1.31 Permission refused to add this allegation

158.1.32 From 16 May 2022 by Miss. Taylor, Miss. Roberts and Miss. McGougan failed to investigate the claimant's complaint about the conduct of Miss Staynings, Mr. Price, Mr Loxley and Mr Bedford
Comparator hypothetical comparator

Ms. McGougan was not tasked with investigating the claimant's complaints. Miss. Taylor was the HR advisor and not a decision maker and had no role in conducting investigating into complaints/grievances; her role was to facilitate the investigation of complaints only. Ms. Taylor was not tasked to investigate the claimant's complaints. Miss. Roberts was not tasked with investigating the claimant's complaints. This allegation fails and is dismissed. This allegation is out of time.

158.1.33 From 11 to 27 May 2022 by Miss Taylor, Miss Roberts and Miss McGougan failed to give the claimant a further hearing in relation to her performance and thus deny her the opportunity to present evidence in relation to it

Comparator a hypothetical comparator

The disciplinary probation hearing took place on 11 May 2022 (page 625 to 629) and was chaired by Ms. McGougan. Ms. Roberts and Ms. Taylor were present but were not decision makers; their roles were, presenting the management case by way of an investigation report (Chardine Roberts) and providing HR advice to ensure correct processes were followed (Ms. Taylor). At the end of the meeting (as set out in the hearing notes) the respondent gave the claimant an opportunity to put in mitigation in a written document. The meeting was adjourned so that any written representations of mitigation could be considered (page 629). There was no suggestion that there would be a further disciplinary meeting. In her evidence the claimant relied upon a comment at the beginning of the meeting at page 625 which stated “as discussed in a pre meeting we will need to speak about this in another meeting read the complaint you have made”. The claimant interpreted this in her evidence as a further meeting for disciplinary issues. The Tribunal found that the claimant misinterpreted this comment; the respondent was accepting the claimant’s grievances handed in that day and stating a further grievance meeting would be held. There was no intention and no further disciplinary hearing offered to the claimant. At the time of being invited to the disciplinary probation meeting the respondent gave the claimant the opportunity to put in a written statement prior to the hearing as well as attending the hearing. At the end of the disciplinary probation meeting the claimant was informed she could put in a further document in mitigation. The claimant was given plenty of opportunities to state her case. The Tribunal found that the claimant was not promised a further disciplinary hearing and was given opportunities to put her case. The claimant failed to establish this allegation on the facts. The allegation fails and is dismissed.

158.1.34 On 27 May 2022, Ms. McGougan dismissed the claimant Comparator Paige and Harjit Sanja

The claimant did not provide any direct evidence about alleged comparators Paige and Harjit in respect of this allegation. The Tribunal determined that Ms. McGougan did dismiss the claimant for poor performance and that she considered the claimant's attitude and behaviour to be incongruent to the respondent’s values based on an investigation report of Ms. Roberts and taking into claimant’s mitigation document. The investigation by Chardine Roberts, the claimant’s line manager included evidence that the claimant was failing to carry out work on prescriptions correctly and in a timely manner; this was a significant part of the claimant’s role (60 to 70% of her role). Furthermore the claimant had effectively fallen out with a number of colleagues. The claimant was still within her probationary period but the respondent extended the claimant’s probationary period on a number of occasions in order to provide the claimant with an opportunity to improve. When asked by the Judge whether it was usual for the respondent to extend probation on a number of occasions, Ms. McGougan informed the Tribunal that the claimant had some sickness so that the extensions were provided to allow time to the claimant to improve her performance. The Tribunal concluded that the claimant’s dismissal was based on the failure of the claimant’s probation, support

and action plan and displaying behaviours inconsistent with the values of the respondent; it had nothing whatsoever to do with race. This allegation fails and the claimant is dismissed.

158.1.35 On and or leading up to 27 May 2022 by Tanya McGougan failed to comply with the procedural safeguards and requirements set out in the ACAS code on disciplinary and grievance procedures specifically by giving the claimant short notice of the dismissal hearing/meeting, not holding a formal hearing and not permitting her to be accompanied to the dismissal hearing/meeting or failing to advise a claimant that she could be accompanied

Comparator a hypothetical comparator

This allegation concerned the claimant's view that there should have been more notice given to her in respect of the disciplinary and outcome meetings. On 4 April 2022 the claimant was invited to a hearing and was provided with all accompanying documents. The claimant had 2 weeks notice of this hearing which was due to take place on the 22 of April. The meeting planned for 22 of April had to be rearranged due to the claimant's illness. Subsequently the claimant was sent a letter on 3 of May requesting the claimant to attend the rearranged meeting on 11 of May 2022 giving the claimant a further weeks' notice (page 696). The Tribunal determined that the claimant had been given sufficient notice and all relevant documents prior to the hearings. There is no dispute that a meeting took place on 11 May 2022 which was a probationary disciplinary meeting. Although the claimant was initially reluctant to attend this meeting at 11 a.m. she was encouraged by Gaynor Taylor (HR) to do so and attended at 11.40 a.m. She was given further time to read all the documents provided previously to her. In the course of this meeting Chardine Roberts presented her investigation report and the claimant was provided with an opportunity to state her case in respect of the allegations. At the end of this meeting the claimant was given time to adduce a written document concerning mitigation. This was to be considered by the respondent on paper and an outcome was to be provided by Ms. McGougan. There was no plan to have a further meeting with the claimant. The meeting that took place on 27 May 2022 was a disciplinary outcome meeting where Ms. McGougan read through the outcome letter with the claimant. The claimant asked Ms. McGougan at the final hearing on a number of occasions that the meeting on 27 May was a disciplinary hearing meeting and Ms. McGougan responded that it was not. The Tribunal preferred the evidence of Ms. McGougan that the meeting on 27 May 2022 was to deliver the outcome of the disciplinary probation hearing on 11 May 2022 (having taken into account the claimant's mitigation documents). The claimant was informed about this outcome meeting on 27 May 2022. The Tribunal concluded that as the outcome meeting on 27 May 2022 was not a disciplinary meeting but an outcome meeting to inform the claimant about the respondent's decision, the ACAS Code on disciplinaries was not applicable. There was no requirement to give the claimant a longer period of notice; or right of accompaniment. The claimant failed to establish facts of her allegation. This allegation fails and is dismissed.

156.1.36 On 27 May 2022 by Tanya McGougan blamed the claimant for the troubles she had encountered in the workplace.

Comparator Ms. Minshull, Paige and Harjit Sanja

Ms. McGougan found (relying upon the investigation report of Chardine Roberts) that the claimant did perform poorly and her interactions with others was poor and inconsistent with the respondent's values. The respondent had independent evidence adduced from the system to establish that the claimant was not producing prescriptions in a timely fashion which amounted to 60-70% of her role. Although the claimant suggested that allegations against her were fabricated, the claimant had stated in her 1:1s she needed support with prescriptions and support was given via Gareth and Mr. Pinnock. There was a significant amount of evidence from the claimant's colleagues that the claimant was difficult; unwilling to take instructions and rude. Ms. McGougan was entitled to find based on the evidence presented by the claimant's own line manager, that the claimant was not performing to the required standard of producing prescriptions (which formed 60 to 70% of her role) and her interactions with others was not in accordance with the ethos of the organisation. This was unrelated to the claimant's race. The allegation fails and is dismissed.

156.1.37 Permission refused to add allegation

159. Harassment related to race (Equality Act 2010 section 26)

159.1 Did the respondent do the following things:

159.1.1 In December 2021 by Joanne Williams the claimants team leader tell another team leader, Diane Kelly, that on performance grounds she was going to extend the claimant's probation, prepare an action plan for her and ensure the claimant failed it so that her employment would be terminated.

For the reasons set out above, the Tribunal found that this allegation had not been established by the claimant on the facts. The allegation fails and is dismissed. The allegation is out of time.,

159.1.2 From December 2021 by Ms. Williams plan to dismiss the claimant

For the reasons set out above, the Tribunal found that this allegation had not been established by the claimant on the facts. The allegation fails and is dismissed. The allegation is out of time.

159.1.3 From 30 December 2021 by Chardine Roberts the claimant's line manager, establish an action plan for the claimant and in due course extend her probationary, without consulting with the claimant before hand about the issues addressed in the plan and giving her the opportunity to improve.

As set out above the Tribunal found the claimant did not establish this allegation; Chardine Roberts the claimant's line manager did establish an action plan and the claimant's probationary period was extended

(because she was not performing at the required standard for prescription work). The Tribunal has already found that the claimant was consulted with about the issues addressed in the plan and was given a number of opportunities to improve by way of her numerous extensions to her probation. The conduct of the respondent was not related to the claimant's race. This allegation fails and is dismissed. The allegation is out of time.

- 159.1.4 On or around 4 April 2022, by Tanya McGougan the claimant's senior line manager adopt the falsehood created by Miss Williams in relation to the claimant's performance by sending the claimant an e-mail informing her that she had failed to complete the action plan and had thus failed her probation;

For the reasons set out above, the Tribunal found that this allegation had not been established by the claimant on the facts. The allegation fails and is dismissed. The allegation is out of time.

- 159.1.5 On or around 4 April 2022 by Miss McGougan reached the conclusions referred to above without giving the claimant an option to improve;

On 4 April 2022 Miss. McGougan had not reached any conclusions about the claimant's employment. On 4 April 2022 Ms. McGougan invited the claimant to a meeting to discuss the investigation report of Ms. Roberts which indicated that the claimant was not performing to the required standard in terms of prescription work and behaviours. By this point in time the claimant's probation had been extended on numerous occasions; Ms. Roberts had raised issues of performance with the claimant during their 1:1s; the claimant had been given opportunities to improve. By this point the claimant had been employed by the respondent for about 9 months (the usual probation period was 6 months). This allegation was not established by the claimant on the facts. The allegation fails and is dismissed. The allegation is out of time.

- 159.1.6 On or around 29 March 2022 find Miss Roberts state untruthfully or inaccurately in an investigation report at the claimant struggled to generate prescriptions for clients quickly enough and had lost some prescriptions.

For the reasons set out above the Tribunal found that the claimant did not establish this factual allegation. This allegation fails and is dismissed. The allegation is out of time.

- 159.1.7 In late April or early May 2022 by Helen Sullivan (National Team Manager) dismiss the claimant's complaints about Ms. Minshull

Helen Sullivan did not uphold the claimant's grievances as indicated above following an investigation into the claimant's grievances. Miss. Sullivan carefully considered all the evidence and determined that the allegations did not benchmark for a positive finding of upholding the grievance. This may have been unwanted conduct but was not related to race. Ms. Sullivan formed her view based on an analysis of the available evidence to not uphold the claimant's grievance. This allegation fails and is dismissed. The allegation is out of time.

- 159.1.8 Permission to add a complaint refused

159.1.9 On or around 21 February 2022 by Georgia Stayning's continue to scan prescriptions in a manner contrary to that indicated to her by the claimant

For the reasons set out above the Tribunal did not find this allegation made out by the claimant on the facts. This allegation fails and is dismissed.

159.1.10 On the same dates by Miss. Stayning's falsely accused the claimant of not speaking with respect, shouting at the claimant whilst doing so "until you learn to speak to me with respect I will not speak to you"

For the reasons set out above, Miss. Staynings did not falsely accuse the claimant of not speaking to her with respect. The Tribunal found that the claimant was rude; Miss. Staynings offered to assist the claimant and the claimant complained rudely to Miss. Staynings that she was not scanning the prescriptions correctly. The Tribunal found above that Ms. Staynings said to the claimant that if she was going to talk to her in an inappropriate manner than not to talk to her. The Tribunal did not falsely accuse the claimant of not speaking with respect; the claimant was rude. The Tribunal has already made findings of facts above as to what was said. This may have amounted to unwanted conduct but it was not related to the claimant's race. Ms. Staynings words (as set out above) were justified in the circumstances. The allegation fails and is dismissed. The allegation is out of time.

159.1.11 On or around 11 May 2022 by Miss Stayning's tell the claimant that she was not to use an upstairs room which the claimant was already aware of

Ms. Staynings accepted that she did tell the claimant not to use an upstairs room. The Tribunal found that at a meeting Ms. Roberts informed the team not to use the upstairs room. She had informed Ms. Staynings to pass the word around. Ms. Staynings did not recall if the claimant was in attendance at the meeting. The Tribunal found that Ms. Staynings just repeated this instruction to the claimant. It may have unwanted by the claimant but was unrelated to race; Ms. Staynings was merely passing on information to the claimant as instructed by Ms. Roberts . This allegation fails and is dismissed. The allegation is out of time.

159.1.12 On the same day by Miss Stayning's shout at the claimant are you going up to the large room you are not allowed to go up there

As indicated above the Tribunal did not accept that Miss. Staynings had shouted at the claimant but informed the claimant about the instruction that had been given as set out above. Insofar as Miss. Staynings raised her voice the parties agreed that she was located some distance away and wished to alert the claimant to the fact that the room could not be used. The conduct may have been unwanted by the claimant but was unrelated to the claimant's race. Miss Staynings was alerting the claimant to the fact that she should not use the room. This allegation fails and is dismissed. The allegation is out of time

159.1.13 On 21 February 2022 by Carl Price stand over the claimant while she was working on reception;

The Tribunal repeats its findings above. The Tribunal determined the claimant had failed to establish this factual allegation. The allegation fails and is dismissed. The allegation is out of time.

- 159.1.14 On 21 February 2022 by Mr. Price state to the claimant that she had made a lot of mistakes, that's questioning her ability to do her job and state that she can sometimes appear to be rude because of the way she speaks to people;

The Tribunal repeats its findings as set out above and had rejected that Mr. Price informed the claimant that she had made a lot of mistakes questioning her ability to do her job. He informed the claimant to upload the documents as Miss. Staynings had requested. The claimant called Mr. Price a liar. Mr. Price spoke to the claimant as a team leader to ask her to carry out her management instruction which he was entitled to do. He did not question the claimants ability to do her job rather the claimant was rude to him. Mr. Price did raise the issue that the claimant could come across as abrupt this was in the context of her conduct and her being resistant to follow instructions. As a team leader Mr. Price was entitled to give instructions to the claimant. The conduct as found by this Tribunal was unrelated to the claimants race. This allegation fails and dismissed. The allegation is out of time.

- 159.1.15 In or around February 2022, by John Loxley sit in the administration room when the claimant was working there;

The Tribunal repeats the findings made above. The fact that Mr Loxley sat in the administration room when the claimant was working there was unrelated to the claimant's race. Mr Loxley's role required him to sit in the administration room from time to time and at the time he was hot desking. This allegation fails and is dismissed. The allegation is out of time.

- 159.1.16 Permission to add complaint is refused

- 159.1.17 In or around February 22 by Mr Loxley ask Frances to deal with a different type of prescription, instead of the claimant doing so

The Tribunal repeats its findings of fact set out above. There was a backlog on prescriptions and the claimant had made a number of mistakes and did not appear to know how to complete the prescription. There were a number of individuals waiting in the reception area. Mr Loxley instructed Francis to do the work instead of the claimant because of the errors made by the claimant and the backlog. He was entitled as a manager to instruct the claimant to allow another colleague to take over the work due to mistakes and a backlog. The conduct may have been unwanted by the claimant but was unrelated to her race. This allegation fails and dismissed. The allegation is out of time.

- 159.1.18 In or around February 22 Mr Loxley stand over the claimant and shout repeatedly you can't do it you can't do the work get off prescriptions and go on to reception. Let Francis do prescriptions.. If you could do the job you would be able to do it. You would know this is a custom prescription

The Tribunal relies to its findings of fact set out above. The Tribunal did not find this allegation made out. The allegation fails and is dismissed. It is out of time.

- 159.1.19 In January February March 2022, by Mr Loxley and Miss. Staynings Check on the claimant while she was operating the telephones by making dummy calls and creeping up behind her
The Tribunal repeats its findings set out above. Mr Loxley and Miss Staynings, as managers were required to ensure the smooth running of the department which included ensuring that phones were answered. In the context of the phone not being answered and third parties complaining of this Mr Loxley and/or Miss. Staynings were entitled to make dummy calls to check that the phones were being answered. This may have been unwanted conduct but it was not related to the claimant's race. The Tribunal rejected that Mr Loxley and Miss Staynings crept up behind the claimant.
- 159.1.20 On 22 February 2022 by Mr Loxley and Miss Staynings question the claimant about an appointment booking and who gave her permission to make it
For the reasons set out above this allegation was not made out and is rejected.
- 159.1.21 On 21 February 2022 by Miss McGougan not take seriously the claimants complaint about Mr. Price, Mr Loxley, and Miss Staynings taking their side straight away
The Tribunal relies upon its findings set out above namely that Miss MCGougan took the incident seriously and listened to what the claimant had to say and invited Mr. Price and Miss Staynings to provide their accounts by e-mail. She ultimately concluded it was "he said she said" and she did not take anybody else's side "straight away" or at all. There could be no credible suggestion there was unwanted conduct or that it was related to the claimant race. The allegation fails, is dismissed and is out of time.
- 159.1.22 On 2 February 2022 by Trevor Bedford senior quality manager appointed to investigate it complaint the claimant made about her colleague Sarah Minshull on 11 January 2022 show hostility to the claimant by using raised tones being aggressive and shouting at her you dare to defy me and what about your behaviour towards Paige and Hari
The Tribunal repeats its findings as set out above and rejects this allegation. The allegation fails and is dismissed. It is out of time.
- 159.1.23 On 2 February 2022 by Mr Bedford refused to discuss all of the issues the claimant had reported
The Tribunal relies upon its findings set out above. The Tribunal found that although Mr Bedford initially refused to discuss all of the issues the claimant had reported; considering that it was not worth covering points where there were no witnesses as it would be the claimant's word against Sarah's; following advice he did interview Sarah. The Tribunal concluded that Mr Bedford's initial position may have been unwanted conduct but it was unpersuaded that this was related to the claimant's race. The allegation fails and is dismissed. It is out of time.
- 159.1.24 From 2 February 2022 by Mr Bedford tell the claimant Miss Minshull would not be spoken to as part of the investigation and then later to do so

The Tribunal relies upon its findings set out above. Mr Bedford initially refused to discuss all of the issues the claimant had reported considering that it was not worth covering points where there were no witnesses because it would be the claimants word against Sarah's following advice he did interview Sarah. The Tribunal concluded that Mr Bedford's initial position may have been unwanted conduct but it was unpersuaded that this was related to the claimants race. The allegation fails and is dismissed. It is out of time.

159.1.25 On 2 February 2022 but Mr Bedford racially stereotyped the claimant by referring to the way she spoke to people coming across as aggressive

Comparator Ms. Minshull or a hypothetical comparator

The Tribunal relies upon its findings above. Mr Bedford set out what others had said about the claimant. This could not amount to Mr Bedford stereotyping the claimant as aggressive. Mr. Bedford's recording of what others had described about the claimant's behaviour may have been unwanted conduct but it was not related to the claimant's race. This allegation fails and is dismissed. It is out of time.

159.1.26 On 2 February 2022 by Mr Bedford making a decision in relation to her complaints without hearing her account

The Tribunal repeats its findings of fact; Mr Bedford did interview the claimant and hear her account prior to not upholding her grievance. This allegation was not made out on the facts. The allegation fails and is dismissed. It is out of time.

159.1.27 In late April or early May 2022 by Helen Sullivan National team manager dismissed the claimants complaints about Miss. Minshull

The Tribunal repeats its findings of fact above. Miss Sullivan determined not to uphold the claimants grievance about Miss. Minshull following careful analysis of the evidence obtained during her investigation. It may have been unwanted conduct not to uphold the claimant's grievance but it was unrelated to the claimant's race. The allegation fails and is dismissed. It is out of time

159.1.28 In late April or early May 2022 not allow the claimant to appeal Miss Sullivan's decision

The Tribunal repeats its findings of fact above. The claimant was given a right to appeal which she did not exercise. The allegation is not made out; it fails and is dismissed. It is out of time.

159.1.29 On 12 January 2022, 1 February 2022, 15 March 2022 and 23 March 2022 by Gaynor Taylor HR manager Miss Roberts and or Miss McGougan fail to investigate her complaints against Miss. Minshull

The Tribunal has already made findings of fact of this above. Miss Taylor; Miss Roberts and Miss McGougan were not instructed to investigate the claimants complaints against Miss Minshull or any complaints. The allegation was not established. The allegation fails and is dismissed. It is out of time

- 159.1.30 From 25 January 2022 by Miss Roberts, Miss McGougan failed to investigate the claimants complaints about Paige, Harjit Sanja and Manjit Mahli

The Tribunal has already made findings of fact of this above. The allegation was not made out on the facts. The allegation fails and is dismissed. It is out of time

- 159.1.31 Permission refused to add this allegation

- 159.1.32 From 16 May 2022 by Miss. Taylor, Miss. Roberts and Miss. McGougan failed to investigate the claimant's complaint about the conduct of Miss Staynings, Mr. Price, Mr Loxley and Mr Bedford

The Tribunal have already made findings of fact as set out above. The allegation was not made out on the facts. The allegation fails and is dismissed. It is out of time

- 159.1.33 From 11 to 27 May 2022 by Miss Taylor, Miss Roberts and Miss McGougan fails to give the claimant a further hearing in relation to her performance and thus deny her the opportunity to present evidence in relation to it

The Tribunal has already made findings facts of this above. The allegation was not made out on the facts. The allegation fails and is dismissed. It is out of time

- 159.1.34 On 27 May 2022, Ms. McGougan dismissed the claimant

There is no dispute that Ms. McGougan dismissed the claimant. This was unwanted conduct. However the Tribunal finds as set out above that Miss MCGougan's decision to dismiss the claimant was based on the report of the claimant's line manager Miss Roberts who identified that the claimant was not performing to the required standard in terms of the prescription work which formed 60 to 70% of her role with the respondent. Furthermore the claimant's behaviour in the workplace was inconsistent with the respondents values. The dismissal may have been unwanted conduct but was not related to the claimant's race. The allegation fails and is dismissed

- 159.1.35 On and or leading up to 27 May 2022 by Tanya McGougan failed to comply with the procedural safeguards and requirements set out in the ACAS on disciplinary and grievance procedures specifically by giving the claimant short notice of the dismissal hearing/meeting, not holding a formal hearing and not permitting her to be accompanied to the dismissal hearing/meeting or failing to advise a claimant that she could be accompanied

The tribunal relies upon its findings above. The factual allegation was not established by the claimant. The allegation fails and is dismissed.

- 159.1.36 On 27 May 22 by Tanya McGougan blamed the claimant for the troubles she had encountered in the workplace.

The Tribunal has already made findings in this regard. Miss McGougan in her dismissal letter took all the relevant information into account including the investigation report conducted by the claimants line

manager, Miss. Roberts and the claimant's letters of mitigation. Miss McGougan formed the view that the claimant was not performing to the adequate standard and her behaviours were inconsistent with the respondents ethos and standards. This may have been unwanted conduct but it was unrelated to the claimants race and based on a significant amount of material which evidenced the claimant was performing poorly as regards prescription work and her poor conduct towards colleagues. The allegation fails and is dismissed.

159.1.37 Permission not granted

160. **Wrongful dismissal / Notice pay**

160.1 What was the claimant's notice period?

Pursuant to the claimants contract of employment (page 348) the claimant was entitled to one weeks' notice if dismissed in her probation. In accordance with the probation policy (page 308) the respondent was entitled to pay notice in lieu where employment was to terminate immediately (see page 313). At the appeal hearing on 24 June 2022 the issue of notice pay was discussed see page 696. It was confirmed that the claimant was paid her notice in lieu. The claimant said she couldn't recall. The payslip of the claimant shows a payment for holiday pay and salary (see page 836). Under cross examination the claimant was asked to confirm whether the sums in the payslip was a weeks' pay namely the notice. The claimant replied "*I need to check*".

160.2 Was the claimant paid for that notice period?

The evidence of Ms. Taylor was that the claimant was dismissed immediately on 27 May 2022 but was paid in lieu of notice (one week) and outstanding holiday) see page 836. The Tribunal concluded that the claimant was unable to establish that she had been wrongfully dismissed; she had no positive case; she could not state whether she was missing the one weeks' notice pay when taken to the pay slip in the bundle. The Tribunal found that the respondent did pay the claimant one weeks' notice pay in lieu as it was entitled to do so in accordance with the claimant's contractual entitlement (page 348) and the probation policy (page 313) which permitted payments in lieu of notice.

161. If not, was the claimant guilty of gross misconduct? or did the claimant do something so serious that the respondent was entitled to dismiss without notice?

This is not an issue. The claim for wrongful dismissal/notice pay is not well founded and is dismissed.

162. All of the claimant's claims are dismissed.

Costs

163. Following the Tribunal giving its liability judgement the respondent made an application for costs on the basis that the claimant had brought the proceedings and conducted the proceedings, vexatiously, abusively and unreasonably and failed to comply with Tribunal orders. The respondent submitted that both limbs

of rule 74 of the 2024 ET Rules had been satisfied. The respondent relied upon the fact that the claimant had failed to comply with the orders of Judge Faulkner dated 2 of April 2024 and orders of Judge Harding 16 December 2024 including agreeing the content of the bundle for which the claimant did not reply. Judge Harding noted that the claimant had also failed to comply with directions. Judge Smart on 13 of December 2024 sent out a strike out warning noting the claimant had failed to comply with Tribunal orders and referenced unreasonable conduct. He set out directions which should be complied with. Judge Maxwell on 31 of January 2025 stated in his order that the claimant had acted both unreasonably and scandalously.

164. Further, the respondent also relied upon the liability findings of the Tribunal that the claimant had fabricated allegations; in the course of the hearing that she had shouted at witnesses and she had failed to follow guidance given by the judge in the course of the hearing. The respondent submitted that the threshold for making an award of costs had been met.
165. Further it was appropriate for the Tribunal to exercise its discretion to make such an order taking into account the extensiveness of the unreasonable conduct of the claimant; the multiple times the claimant has failed to comply and the extensive degree of lack of compliance and unreasonable conduct. In respect of the amount of costs, the respondent sought the maximum amount of costs of £20,000. The amount of costs incurred by the respondent in defending the claim was in excess of £20,000; counsel's fees for the hearing was in excess of £20,000 (excluding VAT); further the respondent had additional legal costs in solicitors fees in excess of this who attended five preliminary hearings in the case because of the claimant's conduct of the proceedings; further the solicitor was engaged in lengthy inter partes correspondence because the claimant had conducted herself and failed to engage in the process of preparation for the final trial.
166. Furthermore by letter dated the 20 of September 2024 (at page 153 of the inter partes correspondence) the respondent put the claimant on a cost warning. The letter alerted the claimant to the fact that it considered that the claim was manifestly weak had and no reasonable prospect success. Further the claimant's non-compliance with Tribunal orders and failure to prepare for hearings was raised.
167. The Tribunal invited the claimant to make submissions but she said she had nothing to say. She was invited to give evidence about her means. The claimant said she had no means. The Tribunal informed the claimant that if she failed to give evidence about the means the tribunal may infer that she has sufficient means to pay a cost order. The claimant stated that she was on benefits and was not in a position to pay in order but she declined to give evidence.

The Law

Statutory Framework

168. Pursuant to Rule 75 of the 2024 Rules, a party may apply for a cost order at any stage up to 28 days after the date on which the judgement finally determining the proceedings in respect of that party was sent to the parties. No such order may

be made unless the paying party has had a reasonable opportunity to make representations (in writing or at a hearing as a Tribunal may order) in response to the application.

169. Pursuant to Rule 74 (2) of the 2024 Rules (when a cost order may be made) it states

“A Tribunal must consider making a cost order...where it considers that

(1) a party or parties representative has acted vexatiously, abusively, disruptively or otherwise unreasonably in either the bringing of the proceedings (or part) or the way that the proceedings (or part) have been conducted; or

(3) ..where a party has been in breach of an order”.

170. Pursuant to rule 76 (the amount of the order) it states that

(1) A cost order may –

(a) order the paying party to pay the receiving party a specified amount, not exceeding £20,000 in respect of the costs of the receiving party;

Case Law

171. Costs in the employment Tribunal are the exception, not the rule. Costs are compensatory and not punitive.
172. The Tribunal should adopt a three-stage approach to a costs order. First, the receiving party must establish one of the gateways pursuant to the Employment Tribunals in rule 74. If this is established the Tribunal then must exercise its discretion as to whether it should make an order or not. The Tribunal must consider the amount of the award and the form of the award and may take into the claimants means (but is not required to do so); see **Jilley v Birmingham & Solihull Mental Health NHS Trust UKEAT/0584/06** and **Single Homeless Project Limited v Abu UKEAT/0519/12**).
173. The gateway of rule 74 (1) provides that the Tribunal must consider a costs order where it considers that a party or parties representative has acted vexatiously, abusively, disruptively or otherwise unreasonably either the bringing of the proceedings (or the part) or the way the proceedings (or part) had been conducted or where an order has not been complied with. If the gateway of the section is established rule 74 (1) is satisfied the Tribunal must consider making a cost order.
174. It is appropriate that litigants in person, usually should be judged less harshly in terms of their conduct than those who are professionally represented see the case of **AQ Limited V Holden 2012 IRLR 648**. The Judgement points out that litigants in person can lack objectivity and the knowledge of law and procedure which this is relevant when deciding whether the criterion are met and in the exercise of discretion.
175. In considering the conduct of the claimant, the Tribunal should look globally at the totality of the nature, gravity and effect of the conduct following the case of

McPherson BNP Paribas 2004 ICR 1398 and Barnsley Metropolitan Borough Council v Yerrakalva 2012 IRLR 78 Court of Appeal.

176. Unreasonable conduct can include pursuing an unmeritorious claim and the Tribunal can have regard to what the paying party knew or ought to have known; see the case of **Keskar v Governors of All Saints C of E school (1991) ICR 493**.
177. The Tribunal is not permitted to substitute its own view for that of the litigant. The question is whether their approach is unreasonable which is objective and often there are many different approaches available, all of which are reasonable. It is only if it falls outside that range that conduct is unreasonable see **the case of Vaughan v Lewisham LBC 2013 IRLR 713 EAT and Solomon v University of Hertfordshire UK EAT 025818**.

Conclusions

178. The Tribunal concluded that the threshold for making costs was met. The claimant had brought and conducted the proceedings unreasonably. First the Tribunal found that the claimant was an unreliable witness and was fundamentally dishonest. The Tribunal found that the claimant had fabricated allegations against the respondent's witnesses. The Tribunal took into account the judgment of **AQ Limited V Holden 2012 IRLR 648** and noted that litigants in person should be judged less harshly in terms of their conduct than those who are professionally represented because litigants in person can lack objectivity and the knowledge of law and procedure which this is relevant when deciding whether the criterion are met and in the exercise of discretion. However the Tribunal distinguishes that case from the present; here the claimant was dishonest and fabricated allegations against the respondent. Furthermore the claimant did not establish facts from which the Tribunal could infer discrimination and the Tribunal had found that the conduct of the respondent had nothing whatsoever to do with the claimant's race.
179. The Tribunal takes into account the case of **Keskar v Governors of All Saints C of E school (1991) ICR 493** where it was found that unreasonable conduct can include pursuing an unmeritorious claim and the Tribunal can have regard to what the paying party knew or ought to have known. The Tribunal determined that the claimant pursued an unmeritorious claim; she had even fabricated some allegations against the respondent. The threshold of unreasonable conduct in bringing the claim and maintaining the fabricated allegations at trial was unreasonable conduct within the meaning of Rule 74 of the 2024 Rules.
180. The claimant's behaviour during the final hearing was also unreasonable. The Tribunal noted that the claimant's questioning of witnesses was unnecessarily hostile, despite being given guidance by the judge that cross examination could be assertive but should be civilised. The claimant did not listen to the guidance and was hostile to witnesses and kept asking the same questions over and over again. The claimant ignored guidance to ask questions which were relevant to the issues but chose to ask questions not pertinent to the list of issues. The claimant shouted at witnesses "*you're a racist*"; when another witness sought a break in cross examination the claimant shouted at the witness as she stepped away from the witness table "*you want a break now, you're an abuser*". In its

findings the Tribunal described the respondent as a kind and supportive organisation that tried very hard to assist the claimant to perform at the required standard and to consider her behaviours towards others.

181. In addition, the claimant failed to comply with Tribunal orders. The Tribunal found that rule 74 (3) was satisfied. The claimant failed to provide the information ordered by Judge Faulkner on 6 October 2023 to clarify her claim as noted in his order dated 2 April 2024 paragraph 16. The claimant failed to comply with the order of Judge Faulkner dated 2 of April 2024 when she failed to engage with the respondent to agree documents to be included in the bundle by no later than 23 July 2024.

182. On 13 December 2024 Judge Smart wrote to the claimant as follows

“The DRA hearing on 16/12/2024 has been vacated because witness statements have not yet been exchanged and the bundle is not yet completed. Your application to strike out this warning is refused because it is essentially re arguing the previous application refused last week by Judge Harding when there is no identifiable material change in circumstances to warrant that application being revisited. You are repeatedly hand delivering documents to the tribunal and expecting the tribunal to act as an administrative service which is not in the interest of justice generally and is taking up a disproportionate amount of the tribunals resources and time. On the Tribunal's own initiative and having considered recent correspondence from the parties, Employment Judge smart is considering striking out the claim because :

- The manner in which the proceedings have been conducted by or on behalf of the claimant appears to have been unreasonable. You appear to be failing to comply with directions and appeared to be generally uncooperative and disruptive*
- you appear to have repeatedly not complied with rule 92 the last such act being delivering a hand delivered type letter today to the tribunal you appear to have not complied with the direction at paragraph 10 of the case management order of employment judge Faulkner dated 15 December 2023 to provide an additional address for correspondence which the claimant had agreed to do at that case management hearing*
- you appear not to have complied with or appear to be being obstructive in allowing both sides to comply with the completion of bundles of documents for hearings*
- you appear not have complied with or appear to be being obstructed in allowing both sides to comply with exchanging witness statements*
- you appear to be refusing to allow postal communication for reasons unknown and claimed that electronic documents are difficult to download yet you are producing typed computer generated documents*
- the totality of this behaviour has caused the vacation of the DRA hearing listed for 16 December 2024.*

183. Judge Smart directed, to avoid the claim being struck out

- (1) *You ought to confirm in 21 days why you have not contacted the respondents representative to exchange statements or if you have not contacted them you must explain what happened and why statements cannot be exchanged as well as provide an expected date of compliance;*
- (2) *you also have 21 days to explain in writing why you cannot accept correspondence by post including any evidence why you cannot provide another postal address as you agree to and also explain what steps you have taken fully and in detail to try and access the PDF bundle. You must also ensure you have downloaded to your electronic devices used to access tribunal documents emails and correspondence from the respondent an appropriate computer programme or app such as abode reader or similar to access the file and confirm in writing that despite doing this you still cannot open and or read the bundle and state why*
- (3) *you also have 21 days to confirm who your legal advisor is including their name the e-mail address and their postal address for sending the bundle to and confirm if they cannot open the bundle either with any supporting evidence. Alternatively you must comply with Judge Faulkner's order at paragraph 10 by providing an alternative postal address to miss Goodman for future correspondence."*

184. Judge Maxwell noted in his order dated 31 of January 2025 that *"the procedural history in this matter is lengthy and complex. Time and time again progress has been delayed by the claimants lack of preparedness failure to comply with case management orders, failure to cooperate with the respondent in agreeing disclosure, the exchange of documents or witness statements. Instead of doing that which was she was ordered to do the claimant has persisted in sending correspondence to the respondent and tribunal addressing the merits of the response and her assertions that the respondent has falsified documents.. The claimant frequently stated that she could not access documents provided digitally and yet would not provide the respondent with a postal address for service. She has sought to use the tribunal as an administrative assistant to relay documents to and from her frequently failing to comply with rule 92. The respondent has written to the claimant repeatedly with its proposed bundle seeking her agreement or list of specific additions her responses to this correspondence have not always been easy to follow she has asked to be sent the index several times which the respondent has done she has complained that documents in the bundle of fabrications and has proposed additions in fake terms my impression is that the claimant had not much if at all read or engaged with the content of the bundle provided by the respondent but had instead looked at the index and had different ideas at different times about additional documents the respondent may have failed to include."* At paragraph 17 of his order he stated *"I have little hesitation in concluding that the claimant for all the reasons set out above has conducted the proceedings in a manner which is unreasonable. Her obstructive approach and disregard for judicial direction is amply demonstrated. She has also behaved scandalously with her allegations against the respondent solicitor."* At paragraph 18 of his order, Judge Maxwell

stated the claimant has “*also repeatedly failed to comply with case management orders to provide information at degree the bundle and exchange witness statements*”.

185. There is clear evidence that the claimant failed to comply with Tribunal orders.

Tribunal’s discretion

186. Further in considering the conduct of the claimant the Tribunal looked globally at the totality of the nature, gravity and effect of the conduct following the case of **McPherson BNP Paribas 2004 ICR 1398 and Barnsley Metropolitan Borough Council v Yerrakalva 2012 IRLR 78 Court of Appeal**. In the absence of the fabricated allegations, the claimant would not have had a case to pursue at the Tribunal. The unreasonable conduct was significant on the part of the claimant. Where factual allegations were established, including where the claimant was dismissed by the respondent there was no hint of any race discrimination; the claimant failed to perform to a satisfactory standard during her probation and behaved in a manner inconsistent with the ethos of the organisation. The Tribunal also determined that there was a significant amount of unreasonable conduct by the claimant in failing to comply with Tribunal orders requiring the respondent to engage in substantial correspondence with her; attend 5 preliminary hearings and the postponement of the DRA. In the context of the extent of the unreasonable behaviour and breach of Tribunal orders the Tribunal deemed it was appropriate to make a cost order.

Ability to pay

187. The Tribunal may have regard to the paying party’s ability to pay but it is not required to do so. The claimant said she cannot afford to pay but actually declined to give evidence about her means. The Tribunal therefore had no evidence about the claimant’s ability to pay.

Conclusions on cost application

188. The Tribunal determined in the circumstances that the claimant acted unreasonably in bringing and conducting the proceedings. The extent of the unreasonable conduct was significant and it included dishonestly making fabricated allegations; continuing to pursue the proceedings when the respondent put her on notice that it regarded the case of having little merit; unreasonably conducting the trial preparation (namely failing to prepare for preliminary hearings, failing to engage in the agreement of a trial bundle) and unreasonable conduct during the hearing (hostile questioning of witnesses; shouting at witnesses; failing to focus on the relevant issues; failing to follow guidance provided by the Judge). Looking globally at the conduct, but for the fabricated allegations the claimant would not have had a case before the Tribunal. Further prior to pursuing the proceedings the claimant should have known she had no reasonable case of race discrimination; the respondent was a caring and supportive employer and the claimant had failed her probationary period on the basis of her poor performance and behaviour. The conduct of the respondent towards the claimant showed no hint of race discrimination. The failure of the claimant to engage in the trial preparation elongated the Tribunal process and increased the costs of the respondent.

189. In the circumstances it is appropriate to make an order. The Tribunal notes that the costs of the respondent are far in excess of £20,000. Counsel's fees alone for the conduct of the hearing are £20,000 (not including VAT). In the circumstances the Tribunal orders the claimant to pay the respondent £20,000 in costs.

Employment Judge Wedderspoon
Date: 18 February 2025

Sent to the parties on:
24 February 2025

For the Tribunal Office:
Suriya Hussain