Case Number: 3307555/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms Lingyu Jiang	**v**	TWM Trust Corporation Limited

Heard at: (CVP) **On:** 15-17 January 2025

Before: Employment Judge R Wood; Mr D Sutton; Mr D Hart

Appearances
For the Claimant: Mr K Clair (Solicitor)
For the Respondent: Mr S John (Counsel)

RESERVED JUDGMENT

1. The claim of direct discrimination on the grounds of race is dismissed.

2. The claim of harassment related to race is allowed.

REASONS

Background

1. Page numbering referred to in square brackets in these reasons are to pages in the bundle, unless otherwise stated.

2. This is a claim which involves allegations of direct race discrimination, and race related harassment. At the relevant time, the claimant was a recently qualified solicitor. She joined the respondent, a company providing legal services, as a solicitor in October 2022. Her employment was terminated at the end of March 2023, when the respondent stated that it would not extend her contract at the end of the six month probationary period. The respondent alleges that this was the result of a fall in instructions to the claimant's team, and a lack of capacity to provide the additional supervision and training which the claimant required. The claimant alleges that the respondent, and certain senior solicitors within the company, displayed discriminatory attitudes towards her and that the dismissal, amongst other acts of less favourable treatment, was motivated by race. The claimant identifies as

Chinese. In addition, it is alleged Mr Ball of the respondent made a number of harassing statements to her, again related to her race. The agreed issues in the case are set out below.

Procedure, Documents and Evidence Heard

3. The Hearing took place on 15-17 January 2025. The claim was heard by remote CVP hearing. The Tribunal first of all heard testimony from the claimant, Ms Jiang. We then heard from the respondent,'s witnesses: Mr Nick Ball (Managing Associate); Mr Jamie Berry (Managing Partner); David Powell (Head of Business Law Department); and Ms Louise Prynne (HR Coordinator). Each of the aforesaid witnesses adopted their witness statements and confirmed that the contents were true. There wa also had an agreed bundle of documents which comprises 408 pages. We also heard helpful submissions from Mr Clair and Mr John (who also provided written submissions).

4. In coming to our decision, the panel had regard to all of the written and oral evidence submitted, even if a particular aspect of it is not mentioned expressly within the decision itself.

Claims and Issues

5. The parties agreed that the Tribunal should consider the following questions:

> ***"Direct race discrimination (EqA 2010, s 13)***
>
> *1. The Claimant is Chinese and compares herself with Ms Nicole Syradd a white British solicitor at R.*
>
> *2. Did the Respondent do the following things:*
>
> *2.1. Providing the Claimant will less billable hours as her colleagues. The Claimant relies upon Nicole Syradd (NS) as an actual comparator.*
>
> *2.2 Listing the Claimant's hourly fee rate below that of NS, when NS was not a member of the Business Law team at the time?*
>
> *2.3 Dismissing the Claimant.*
>
> *3. Was that less favourable treatment?*
>
> *3.1. The Claimant says that she was treated worse than NS in respect of the allegations.*
>
> *3.2 The Claimant says that she was performing the same or substantially the same job as NS for the period 23 February to 28 March 2023, when NS also became a Newly Qualified Solicitor in the Business Law Department (BLD).*
>
> *3.3. The Respondent denies the facts in 2.1-2.2.*

3.4 Regarding 2.1 above, the Respondent denies that NS is a valid comparator because her circumstances were not materially the same as the Claimant:

a. she had worked as a paralegal for 2 years within the Respondent firm and had completed a 6 month seat in the BLD.

b. NS retained corporate client files when moving from her BLD seat, until she returned to the BLD as a NQ solicitor upon successful completion of her training.

c. NS was highly competent to carry out corporate/banking work with minimal supervision.

3.5 Regarding 2.2, the Respondent's position is that the Claimant's hourly fee note was the same as NS's and ought to have been the same, at £260 for the relevant period.

3.6. Regarding 2.3 - The dismissal was for entirely business related matters as set out in the termination letter. Race played no part in the decision.

4. If the Claimant was subject to less favourable treatment, what was the reason she was subjected to it?

4.1 the Claimant says that it is because of her Chinese race/ethnicity.

4.2 the Respondent says that it was because of business reasons, namely:

a. a significant reduction in banking work due mainly to the loss of the main banking client's instructions.

b. the transactional work in the corporate team requiring work at a level above the Claimant's competence.

c. there being insufficient capacity to train and supervise the Claimant to achieve the level required for the work then available.

***Harassment** (s.26 EqA)*

5. Did NB:

5.1 comment that "Chinese clients often have problems with their IDs"?

5.2 ask the Claimant "is that Chinese law you are searching"?

6. The Respondent denies that either was said.

6.1 Regarding 5.1 was not said and was possibly a misunderstanding of an actual specific Chinese client standard money laundering check issue and nothing more, and

6.2 in relation to 5.2 the Respondent's position is that what actually occurred was NB sought clarity as to the source of a legal point that the claimant had researched and whether the jurisdiction was English Law.

7. If they were said, do they amount to harassment, in that they were:

7.1 unwanted conduct related to race?

7.2 had the purpose or effect of violating C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for C?

7.3 whether it was reasonable for the conduct to have that effect?"

Legal Framework

6. The relevant legislation in respect of the allegations of direct discrimination are contained in the Equality Act 2010 ("the Act").

7. Race is a protected characteristics as defined by section 4 of the Act. Sections 39 and 40 prohibit unlawful discrimination against employees in the field of work. Section 39(2) provides that:

"*An employer (A) must not discriminate against an employee of A's (B) -*

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

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

(c) by dismissing B; or (d) by subjecting B to any other detriment."

8. Section 13(1) of the Act sets out the definition of direct

"discrimination:

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."

9. Comparators are dealt with in *section 23(1*) of the Act:

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

10. Section 136 of the Act provides that:

"*If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the*

provision concerned, the court must hold that the contravention occurred".

This provision reverses the burden of proof if there is a prima facie case of direct discrimination.

10. In addition to the statutory provisions, Employment Tribunals are obliged to take in to account the provisions of the statutory Code of Practice on the Equality Act 2010 produced by the Commission for Equality and Human Rights.

11. In London Borough of Islington v Ladele (Liberty intervening) EAT/0453/08, the Employment Appeal Tribunal upheld the following:

(a) In every case the Employment Tribunal has to determine the reason why the claimant was treated as he was. In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

(b) If the Employment 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.

(c) Direct evidence of discrimination is rare and Employment Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test. The first stage places a burden on the claimant to establish a prima facie case of discrimination. That requires the claimant to prove facts from which inferences could be drawn that the employer has treated them less favourably on the prohibited ground. If the claimant proves such facts then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If they fail to establish that, the Tribunal must find that there is discrimination.

(d) The explanation for the less favourable treatment does not have to be a reasonable one. In the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation. If the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. The inference is then drawn not from the unreasonable treatment itself - or at least not simply from that fact - but from the failure to provide a non-discriminatory explanation for it. But if the employer shows that the reason for the less favourable treatment has nothing to do with the

prohibited ground, the burden is discharged at the second stage, however unreasonable the treatment.

(e) It is not necessary in every case for an Employment Tribunal to go through the two-stage process. In some cases it may be appropriate simply to focus on the reason given by the employer ("the reason why") and, if the Tribunal is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test.

(f) It is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The determination of the comparator depends upon the reason for the difference in treatment. The question whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as she was. However, as the EAT noted (in *Ladele*) although comparators may be of evidential value in determining the reason why the claimant was treated as he or she was, frequently they cast no useful light on that question at all. In some instances, comparators can be misleading because there will be unlawful discrimination where the prohibited ground contributes to an act or decision even though it is not the sole or principal reason for it. If the Employment Tribunal is able to conclude that the respondent would not have treated the comparator more favourably, then it is unnecessary to determine the characteristics of the statutory comparator.

12. The meaning of the comparator exercise (in the materially identical predecessor legislation) was authoritatively stated by Lord Scott in *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11*:

> *110. In summary, the comparator required for the purpose of the statutory definition*
>
> *of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class. But the comparators that can be of evidential value, sometimes determinative of the case, are not so circumscribed. Their evidential value will, however, be variable and will inevitably be weakened by material differences between the circumstances relating to them and the circumstances of the victim.*

13. Section 26 of the Act defines harassment as:

> (1) A person (A) harasses another (B) if—
>
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Evidence

14. What follows is a summary of the testimony we read and heard from the witnesses, focussing on those matters which were particularly pertinent to the Tribunal's findings and reasons. We stress that the evidence was considered in full.

15. As stated we first of all heard from the claimant. In her statement, she explained that she had been born and had grown up in China, and came to the UK in 2013. She identifies as Chinese. She studied here and commenced working as a paralegal in December 2019. She later started a training contract, which she completed in May 2022. She moved firms in June 2022 to a City law firm specialising in mergers and acquisitions. In September 2022, she accepted an offer to move to the respondent.

16. The claimant went on to explain that On 3 October 2022, Ms Prynne of the respondent held an induction meeting with new joiners at the Guildford office. During the meeting, it is suggested that Ms Prynne asked someone in the group to make sure to close a door, stating that "there are some Black people from the gaming company working downstairs." The claimant says she discussed this with Seyda Shamimal, another inductee, on the train on my way back to London. Seyda seemed reluctant to talk about it and said, "You must have misheard."

17. In the beginning, Mr Powell, the claimant's line manager and supervisor, asked the claimant to work on some banking matters. The team needed a solicitor with conveyancing experience to help with drafting reports on title and raising enquiries, which were part of the banking work.

18. The claimant stated that in October 2022, Mr Powell decided that the claimant's hourly rate banding would be £240 plus VAT. Mr Berry overheard this decision and commented, "That's the lowest.". Later it was pointed out to the claimant that she was being charged out at £220 plus VAT. She observed that this indicated that she was less capable than other solicitors. This had an effect around the office of lowering expectations of her ability. In late December or early January 2023, the claimant states that someone came to Mr Powell's desk and pointing out that Nicole Syradd's hourly rate was £260 plus VAT whilst the claimant's was £240 plus VAT. Ms Syradd was a trainee in the family department at the time.

19. Ms Syradd joined the banking law department at the end of January 2023 or early February 2023. In February and March, the claimant alleged that her billable hours were significantly lower than Ms Syradd's. The claimant stated that she was assigned fewer than five matters to handle, whereas Ms Syradd was working on and leading approximately 20 or more new matters. It was

suggested that Ms Syradd was extremely busy drafting new summaries or working on other tasks, and the claimant could see no justifiable reason why the respondent didn't want her, another junior solicitor, to share the workload with Ms Syradd. By 24 February 2023, the claimant felt that her mental wellbeing was deteriorating. She felt like an outsider. She found it very difficult. She says that she messaged her husband telling him that she wanted to die.

20. There was due to be a review of the claimant's probationary period on 3 March 2023 but Mr Powell informed the claimant that he wanted to cancel it, explaining that it should have been scheduled for 3 April 2023. The claimant had a brief chat with him to see if there were any concerns. She asserts that none were raised and that Mr Powell commented that she was a good solicitor.

21. The claimant went on to describe how Mr Ball, the senior solicitor in the corporate team, was reluctant to give her work above others. She stated that Mr Ball was able to delegate his workload, and that he was a nice person and was always willing to help junior solicitors. However, he could have delegated cases to her, but didn't.

22. In mid-March 2023, the claimant says that she overheard Mr Ball mentioning Chinese people's ID issues. He said that in his experience, Chinese people often have problems with their IDs. On completion of one of Mr Ball's files, the buyer's solicitor wanted to hold the purchase money on a transaction. Mr Ball thought that it should be the seller's solicitor, i.e. the respondent, who should hold the money. Initially, the claimant said she had agreed with Mr Ball. However, she undertook legal research on undertakings on completion for mergers and acquisitions, and found an article on LexisNexis which contradicted Mr Ball's position. The claimant showed it to Mr Ball. He glanced at it and asked, "Is this Chinese law you are searching for?" The claimant asserted that Mr Ball did not treat her or her work as seriously as he treated others.

23. Throughout her tenure, the claimant maintained that she was doing her best to bring in more work and contribute to the team's business growth. However, on 27 March 2023, Mr Powell informed the claimant that they had held a meeting on 24 March 2023 and the respondent had decided to terminate her contract.

24. On 31 March 2023, the claimant sent an email to the respondent appealing the decision to dismiss her. On 4 April 2023, the appeal meeting took place, chaired by Mr Berry. The claimant alleged that this a tick-box exercise. At the beginning of the meeting, Mr Berry said he would discuss all the points in the claimant's appeal email with her. However, the claimant stated that he had not done so. She went on to explain that when she told him that she had more to say, he had ended the meeting and hung up abruptly. On 5 April 2023, Mr Berry sent an email stating that he upheld the termination decision.

25. The claimant submitted that the respondent wanted to grow the banking law department team and retain the right employees, and that race was one of the reasons they considered when deciding whether to keep candidates or not. She further started they applied stricter rules to her than to other employees. The reasons listed in the respondent's termination letter were not the real reasons.

26. In October 2023, the claimant explained that she found a job at an ABS law/accounting firm based in Sheffield and worked there until February 2024. She said that she suffered from mental health problems during and after her employment with the respondent, and has been receiving mental health treatment services.

27. The claimant answered questions during the hearing. She maintained that her allegation against Ms Prynne was true even though she had not included it in her list of issues, the ET1, or the feedback form for the induction [356]. She had not raised the incident with anyone else at the respondent. She accepted that she had been taken on to work on the banking side and that the respondent had needed someone with a conveyancing background. She also accepted that the banking team had lost a client shortly after she started, which had meant a significant reduction in instruction, although she could not confirm that it was as much as 60%. The claimant denied that there had been a number of pieces of work she had completed which required heavy amendment.

28. She maintained that Ms Syradd was given much more work than she was, and she did not know why. The claimant conceded that she needed a significant amount of training or supervision for corporate work. It was more complex than banking work. She was asked why she had not mentioned Mr Ball's alleged discriminatory attitudes to someone in HR. She said she had not been someone to go to HR regularly. At the appeal, she said she had been struggling mentally.

29. She was referred to [408] which suggested that she was being charged out at £260 plus VAT per hour. She was also shown [150], which indicated that she was charged out at a higher rate than Ms Syradd. It was suggested that she was simply wrong about this aspect of her case. She did not respond.

30. As to paragraph 47 of her witness statement, the claimant maintained that she had heard Mr Ball state that Chinese people have problems with their identity documents. She was asked if she had misunderstood a conversation about a particular Chinese client. She stated that it was about Chinese people generally and that she believed that that was the way he felt.

31. When asked, the claimant continued to suggest that Mr Berry had hung up on her at the appeal meeting. She was shown [296] which appeared to show that she had ended the call. She said there were no other Chinese employees.

32. We then heard from Mr Powell. He was head of the business law department, which was sub-divided into banking, corporate, commercial and employment teams. There had been significant changes to personnel in the department in 2022, which had unsuccessfully tried to recruit for a number of roles, including senior solicitors. After the changes, Mr Ball was the only solicitor in the corporate team, supported by one trainee.

33. Mr Powell stated that the claimant had been taken on to work in the banking team, due to her property experience, but would also assist with corporate work. It was felt she had limited experience and would require training. Mr Powell went on to explain that in October/November 2022, the banking team lost its largest development finance client, who had accounted for 63% of the instructions to the banking team in the previous three years. The claimant had been employed to cover work which suddenly did not exist.

34. Mr Powell went on to explain that the claimant appeared to not understand some basic legal concepts and that she would need a lot more training than anticipated. The claimant's probationary period was reviewed in 9 January 2023 [148]. In February/March 2023, Mr Powell stated that he and Mr Ball had numerous conversations about involving the claimant more as her time recording was down [248-249]. However, they were both under increasing pressure and did not have time to properly supervise and train her. Mr Ball's feedback had been that the claimant's work required heavy amendment, and that it was quicker for him to do it himself. Mr Powell explained that it was felt that Ms Syradd operated at a higher level albeit that she too was a newly qualified solicitor.

35. On 27 March 2023, Mr Powell and other senior staff met to discuss the claimant's performance and future employment. Due to her performance and the lack of time available to either Mr Powell or Mr Ball to train and supervise her, it was decided that her contract would not be extended.

36. In his statement he went on say that the respondent had taken on Ms Syradd as a office assistant in 2016, after completing her law degree. She completed her legal practice course and was given a training contract in 2021. She had spent her second training seat in the business law department between February and August 2022. She became a newly qualified solicitor in the department in February 2023. It was Mr Powell's evidence that she had performed at a very high level throughout. As such she had retained certain clients for the purposes of continuity. Files were allocated on the basis of suitability. She was charged out at an hourly rate of £240 plus VAT, whereas the claimant, as 1PQE, was charged at £260 plus VAT.

37. In answer to questions, Mr Powell explained that it became apparent that the claimant wasn't as competent, primarily in the corporate area. She had been recruited to do banking and corporate work. Her capacity to do the latter was not as suggested in her CV. When asked about the first probation review in January 2023, he stated that it had highlighted some concerns e.g. language issues. She agreed to work on this issue. He said he had wanted to work with

the claimant. The report at [383] was an accurate representation of his concerns.

38. Mr Powell went on to explain that dismissal did not enter his head until March 2023. He had wanted to find a role that would work but in March she was not at the standard they wanted and they didn't have the capacity to get her to that standard. It was a business decision to dismiss that he had made. Race had not played a role.

39. Mr Ball then gave evidence. He is a senior associate with the respondent working in corporate law within the business law department. He stated that his view, based on the interactions he had with the claimant and the comments that she had made, was that her knowledge and experience of corporate work was very limited, and she was not confident enough to practise such work without further training and supervision.

40. Regarding the harassment allegations raised by the claimant, Mr Ball had become involved in a corporate deal with the project name "Project Beech" on and around 21 February 2023. It was proposed that the completion payment not be forwarded to the seller's solicitors but that there be simply an undertaking to do so. Mr Ball took the view that this was not usual practice and not in the best interests of his clients (the sellers). Mr Ball stated that he recalled the claimant undertaking research and stating that he was wrong. He recalled that he asked the claimant about what she had looked at and whether she had looked at an English law practice note. He did not recall asking if she had looked up Chinese law and did not believe that he would have done so.

41. On 20 March 2023, Mr Ball recalled having a conversation with a colleague about a client of Chinese origin who was the subject of monitoring warnings, and who had not provided relevant documents and information. He believed that the claimant overheard this discussion during which he explained the importance of carrying out checks on the client. He did not recall any general comments and did not believe that he would have done so. He denied any race discrimination or harassment related to race. When cross-examined, Mr Ball stated that he recalled having specific discussion about a particular client with whom there were problems with identity documents. The person was of Chinese origin.

42. In broad terms, Ms Prynne and Mr Berry supported the evidence already provided to the Tribunal. Ms Prynne denied that she had made discriminatory comments at the induction interview.

Findings of Fact and Decision

43. At the material time in October 2022, the claimant, Miss Jiang was a solicitor of only several months post qualification experience. Before moving to the respondent, she had trained and then practised as a junior solicitor, for a number of different firms, where she had acquired experience in the commercial and corporate law fields. The claimant was employed by the respondent on a six month probationary basis on 3 October 2022. She was

employed as a junior solicitor to work in their business law department, but with the intention that she work mainly, though not entirely, within the banking law team. Her supervisor was David Powell, who headed the banking law team, and who was also head of the business law department.

44. Unfortunately, shortly into the claimant's employment, the respondent lost it's biggest provider of banking law related instructions. The scale of the loss was severe. We accept that it meant that somewhere in the region of 60% of overall banking law team instructions were lost almost overnight. In the few months that followed, we find that there was a drastic reduction in work in the banking team. This had a corresponding impact on the work available for those within that team, which included the claimant. We accept the evidence we heard from the respondent's witnesses on this point. In particular, we found Mr Powell to have been a credible witness. In any event, this general theme of the respondent's case was not really challenged by the claimant at the hearing.

45. We find that this change in the flow of work into the business was significant because it required that the emphasis of the claimant's practice change, from being one dominated by banking instructions provided by Mr Powell, to a reliance upon work from the corporate team and Mr Ball. This was unfortunate for the claimant because we find that her strengths lay elsewhere. We accept that the claimant was of limited PQE, and that she was always likely to require training and supervision with whatever tasks she undertook. Mr Powell accepted as much. However, we find that there was a problem with the claimant's continued training and supervision for two reasons. Firstly, because she found the complexity of the corporate work load more demanding, and that her experience of such work was not as the respondent, in particular Mr Powell and Mr Berry, had anticipated. This meant that work completed by the claimant required a high degree of supervision, and that he work often needed significant amendment.

46. Secondly, at about the time the claimant joined the respondent, there had been a reorganisation of the corporate team. The partner within the team, Mr Berry, had become managing partner. Another had left the firm altogether, leaving the managing associate, Mr Ball, as the only senior solicitor in the department. Essentially, he was to some extent, managing his workload, and that left behind by his colleagues. We find that this left Mr Ball under extreme pressure. We accept that he was correspondingly in a position whereby he did not have time to check and amend the claimant's work to the necessary degree. As Mr Ball put it, it was quicker to do it himself. This was perhaps a harsh conclusion, but one which Mr Ball genuinely and legitimately held. Again, this proposition was not really challenged by Mr Clair on the claimant's behalf.

47. The matters set out above resulted in a review of the claimant's probation at the end of March 2023. There was a meeting on 27 March 2023, between the claimant and Mr Powell, during which the claimant was told that her contract was to be terminated and setting out the reasons why. By letter dated 28 March 2023 [262], the respondent gave notice of termination of the claimant's

contract of employment, and reiterated the reasons for the decision. In essence, that there had been a reduction in banking work; an experience and knowledge deficit on the part of the claimant; and a lack of capacity to provide adequate training and supervision. We accept these reasons and that they reflected the business situation on the ground at the time. As we have said, this was not challenged to any great extent at the hearing, not least because the claimant was hardly in a position to do so.

48. At this stage, it is worth making some remarks about the claimant's credibility as a witness. In general terms, we found her to be inconsistent and vague. By way of example, she failed to mention any of the matters which form the subject of this claim, either in the meeting with Mr Powell on 27 March 2023, or in the appeal process with Mr Berry. In our judgment, this failure cannot simply be explained by the difficulties associated with making claims of this nature directly to an employer.

49. Moreover, there were potentially serious aspects of the allegations, which appear in the claimant's witness statement but which do not appear in her ET1 and/or the list of issues. The best example is the allegation which appears at paragraph 8 of her witness statement, in which it is suggested that Mrs Prynne made a remark (at the claimant's induction) about closing the office door because their were some black people from a gaming company downstairs. This is possibly the most egregious act of discrimination/harassment appearing in the papers, yet it was never mentioned at the time of the incident; or at the end of her contract with the respondent; or in her ET1. Neither is there mention of it in the questionnaire that the claimant filled out about the induction shortly afterwards. The omission of such an allegation from, in particular, a claim form which purports to set out race discrimination related complaints is puzzling at best. It demonstrated a worrying inconsistency which, in our judgment, has had the effect of undermining the claimant's evidence, both on this specific issue, and as a whole. Having listened to Ms Prynne give evidence, we find that it is highly unlikely that the comment was made. Ms Prynne has, in contrast to the claimant, been consistent about this. As a result of all of these matters, the Tribunal has tended to place less weight on the claimant's testimony, especially when there was a conflict between her evidence and that of the respondent's witnesses.

50. It was also our view that the claimant had a tendency to over-estimate her level of experience and ability. In fairness to her, there are few who can say that they have not exaggerated to some extent in their CV's, job applications, or at recruitment interviews. There is no doubt that she had some experience of banking law and corporate law issues. However, we accept the respondent's evidence that she overstated her corporate law competence. In fairness to both parties, neither had expected her to be required to be involved to such an extent with the corporate law team when she was recruited. However, as we have found, the changing situation on the ground had revealed that the claimant was deficient in corporate law terms. This was not her fault (nor the respondent's) but it was the reality of the situation in January-March 2023.

51. We turn then to the paragraph 2.1 of the list of issues, namely whether the respondent provided the Claimant with less billable hours than her colleagues. The Claimant relies upon Nicole Syradd as an actual comparator. In our view, the claimant's billable hours over the relevant period of time appears to have varied, both in terms of the number of hours she received, and as to how they compared to other employees' hours. At times, her hours were higher than others, including Miss Syradd. At other times she recorded less than her [125, 129, 157, 190]. There does not appear to have been any pattern of less favourable treatment, either with Ms Syradd, or other members of staff. In any event, we are not at all persuaded that Miss Syradd is an appropriate comparator. True, she was a junior solicitor, but she had been at the respondent for much longer, and had the benefit of work from clients she had carried over from her training contract, partly performed within the business law department.

52. At paragraph 2.2 of the list of issues it was alleged that the Claimant's hourly fee rate was below that of Miss Syradd, when she was not a member of the business law team at the time. It is not at all clear which point in time this part of the claim was said to relate. However, there was very limited evidence to suggest, as alleged, that the claimant's hourly rate was set at £220 plus VAT or that it was ever at a lower rate than Miss Syradd. Indeed, the documents to which we were referred support the proposition that she was charged out at £260 plus VAT per hour [408 & 150]. It was our view that the claimant was simply in error about this. It was not clear whether this was a genuine misunderstanding, or something more deliberate. Whichever was the case, we were satisfied that it seriously undermined the credibility of her evidence as a whole. In any event, we can see no reason why the respondent would lower her hourly rate artificially as a form of direct discrimination. We are persuaded that it would have been to the detriment of the respondent, not the claimant. We therefore dismiss this aspect of the claim.

53. Finally, we address the suggestion that the claimant was dismissed for racially motivated reasons. For all of the reasons already set out, we do not accept this. The reason for the termination of the claimant's contract were clearly expressed by Mr Powell at the time, and have been maintained throughout this case. We accept his evidence. Indeed, his reasons were barely challenged. This is not a case where the respondent is said to have come up with bogus reasons to cover up a discriminatory act. What Mr Clair says is that the racial element of the decision runs alongside the stated legitimate business reasons for dismissal.

54. In general terms, our difficulty is that the claimant appears to have been liked at the respondent. Both Mr Powell and Mr Berry said so, the former in her mid-term probation report. There is little indication that she was not popular. Indeed, we find that Mr Powell, who took the decision to dismiss, was rather fond of her, and that he regretted having to terminate her contract. His mid-term report was described by Mr Clair as a glowing 9/10. We do not fully agree with that characterisation of the report, but we find that it is difficult to see in it signs of a discriminatory anti-Chinese sentiment on Mr Powell's part.

Indeed, when the claimant was asked whether Mr Powell had been racially motivated, she was, to say the least, equivocal in her response.

55. Furthermore, Mr Clair accepted that Mr Berry had not been racially motivated in his decision to uphold the decision to dismiss. He suggested that Mr Berry had been unaware of the improper motives of other senior staff. This is not inconceivable, but in our view it is not supported by the evidence. We take the view that if there had been racial motivation at play, that he would have been aware of it. It was apparent that he liked the claimant too, and could have been expected to have challenged a dismissal based on her racial background. Indeed, we accept that he was disappointed to think that the claimant would not have raised a genuinely held grievance at the appeal, if there had been one. We would add that we reject the suggestion that Mr Berry refused to allow the claimant to discuss issues that she felt were relevant, or that he abruptly ended the video call. Again, there is clear documentary evidence to the contrary [296] which clearly demonstrates that the claimant left the call a short time before Mr Berry.

56. In summary, we are satisfied that the dismissal was carried out for the reasons given at the time. The claimant has failed to persuade us that there is even a prima facie case of direct discrimination on the part of the respondent.

57. We then move on to consider the claim of racially motivated harassment. At paragraph 5.1 of the list of issues, it is alleged that Mr Ball stated "*Chinese clients often have problems with their IDs"*. Mr Ball told us that he had made a remark about a specific client of Chinese origins about whom he was having issues concerning identity documents. He explained in some depth the context of this. On this allegation, we accepted Mr Ball's evidence. We found the claimant's evidence in relation to this comment to be rather vague, and we preferred Mr Ball's testimony.

58. At para.5.2, it is suggested that Mr Ball asked the claimant "*is that Chinese law you are searching*". This comment was made in a very particular context. Mr Ball had made an observation on a legal issue. For some reason, the claimant had gone off and done her own research on the point, and had openly contradicted Mr Ball, who was of course considerably her senior. We find that it is likely that this annoyed Mr Ball, partly because it was probably ill advised for the claimant to have challenged him in so blatant a way, but also because he was over worked, and because the claimant was a source of frustration for him in broader sense. On this issue we found Mr Ball's testimony to be vague and unconvincing.

59. We find that Mr Ball did retort with a comment about whether she was referring to Chinese law. He did not accept this although he did recall asking if it was a reference to an English practice note. It seems to us there may be little to choose between those two comments. We ask ourselves why there would be any reference at all to the cultural origin of her research? Would he have said that to a white British solicitor? Why would a solicitor have made

such a comment based on Chinese law when the issue was clearly one of English law?

60. In our judgment, it was a racially motivated put down, said in the heat of the moment. No doubt it was out of character, born out of the pressure he was under at the time at work. We are satisfied that it was unwanted conduct and related to the fact that the claimant is Chinese. If it was not intended to embarrass and humiliate the claimant, then we have no doubt that it would have had that effect nonetheless.

61. The claimant alleged that this comment was illustrative of a broader attitude towards the claimant so far as Mr Ball and the respondent was concerned. For all of the reasons we have set out, we do not agree with her about that. However, we do find that in respect of paragraph 5.2 of the list of issues, that the claimant's allegation of race related harassment is made out. We would add that it is an example of harassment which is towards the bottom of the scale of seriousness for such matters.

62. In summary, the claim of direct discrimination is dismissed. The claim of harassment is allowed.

Judgment and Reasons approved by:

Employment Judge R Wood

Date: 24 February 2025

Sent to the parties on: 25/2/2025

N Gotecha
For the Tribunal Office