EMPLOYMENT TRIBUNALS

Claimant: Ms A Simmonds

Respondent: Close Brothers Vehicle Hire Limited

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 17, 18 and 19 March 2025

Before: Employment Judge Brewer
Mr A Wood
Mr R Jones

Representation

Claimant: Ms F Updale, Claimant's mother
Respondent: Mr K Wilson, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that all of the claimant's claims of direct race discrimination fail and are dismissed.

REASONS

Introduction

1. This case came before us for a hearing over three days. The claimant was represented by her mother, Ms Updale, and the respondent by Mr. Wilson of Counsel.

2. We had an agreed bundle of documents running to 475 pages, a witness statement from the claimant and from her mother, along with witness statements from the respondent's witnesses; Emma Motlib, Sarah Frost and Howard Smith. We heard oral evidence from all of these witnesses.

3. The tribunal started at 10:00 AM with the intention that there should be some discussion about housekeeping prior to a break for tribunal reading time. As I started speaking, I could hear a child or children in the background and I mentioned that it would be best if that could be avoided at which point Ms Updale said that the noise was coming from her children. I continued but Ms Updale appeared to be speaking to somebody who was off screen and that turned out to be her partner, the claimant's father. I explained that it would be better if everybody listened to my introduction at which point the claimant's father suggested that I was being rude. The claimant attempted to speak directly to the tribunal, but I explained that as she was being represented by her mother, anything she had to say before being sworn in to give evidence should really be through her representative. It is fair to say that this introduction was not what the tribunal expected, and we broke for reading time until 11.30 AM.

4. We reconvened to resume the hearing at 11:30 AM. At this point Ms Updale said that she had emailed a complaint about the tribunal's behaviour to the tribunal office and that she was not prepared to proceed unless and until that was resolved. It was suggested that we take a further 30 minutes, and we agreed to resume at 12 noon.

5. The duty judge confirmed to the tribunal that an e-mail had been received about the morning's events from the claimant's representative. Given that complaints are not dealt with by the employment tribunal but by the JCIO, there was a proposal simply to acknowledge receipt and advise Ms Updale about how to complain. We resumed at 12 noon, and I explained to Ms Updale that she would receive an acknowledgement and information about how to complain and asked whether she was prepared to proceed with the rest of the hearing, and she confirmed that she was. Neither I nor members were in control of the response to Ms Updale's correspondence with the tribunal office.

6. Prior to the beginning of day two of the hearing we were advised that further complaints had been received from Ms Updale. One was addressed directly to me which contained unspecified concerns about the treatment of the claimant/claimant's representative, but also a concern that the promised response from the tribunal office to the original complaint email had not been received.

7. In the event a detailed response was sent by our REJ to Ms Updale explaining the complaint process and confirming that it was up to this tribunal to determine whether the proceedings could continue in all the circumstances. By now the time was 11.00 AM. We explained the reason for the delay in starting to the respondent.

8. Members and I discussed how to proceed. We were mindful that if the case was postponed there could well be a very significant delay in relisting given that currently multi-day cases in Midlands East are being listed in late 2026/early 2027, and this is a case which commenced in 2023. Further, the respondent had incurred no doubt significant costs to date which would be wasted by a postponement, and which might well result in an application for wasted costs. We also considered whether we should recuse ourselves but were satisfied that this tribunal had proceeded very much as expected and as the vast majority of tribunals do, and we could see no reason for recusal.

9. We therefore decided to continue with the hearing, if necessary, in the absence of the claimant/her representative. In the meantime, having received her response, Ms Updale wrote to the tribunal to confirm she would be attending the hearing and proposed starting at 2.00 PM. The tribunal discussed the start time and given that we still had to hear from four witnesses and hear detailed submissions, and given we had already lost time from the allocated three days, we decided that we would start at 11.45 AM.

10. We therefore instructed the clerk to email Ms Updale to confirm that the hearing would recommence at 11.45 AM. All parties arrived on time and day two proceeded.

11. We note that part of the claimant's case was that there were only two members of staff who are not white British working at the respondent being the claimant and another apprentice who we shall refer to as CM. There was some debate about CM's ethnicity because it is plain from the documentation at [475] that CM identified himself as White British. In order to resolve the matter, we asked the respondent if CM could attend the hearing voluntarily, and they helpfully arranged that he did. We deal with his evidence below.

12. On day three we concluded the evidence and submissions, and we reserved our judgment which we set out below.

Issues

13. The agreed list of issues is set out in the Appendix to this judgment.

Law

14. We set out below a brief description of the relevant law.

15. The basic provision in relation to direct discrimination is in section 13 of the Equality Act 2010 as follows:

> *"**13 Direct discrimination***
>
> *(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

16. In this case the claimant was not employed by the respondent. The respondent provides practical training under an apprenticeship model. We consider that sections 55 and 56 of the 2010 Act is engaged. The relevant part of section 55 is as follows:

> *"**55 Employment service-providers***
> ***…***

> *(2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—…*
>
> *(d) by subjecting B to any other detriment."*

17. Section 56 confirms that for the purposes of section 55, the provision of an employment service includes the provision of vocational training. We should add that Mr Wilson argued that the claimant could be a contract worker pursuant to section 41. We agree that is possibility in this case.

18. In relation to direct race discrimination, for present purposes the following are the key principles.

19. Under section 13 Equality Act 2010 (EqA), there are two issues: (a) less favourable treatment and (b) the reason for that less favourable treatment. These questions need not be answered strictly sequentially (**Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337).

20. Given the treatment must be "less favourable" a comparison is required, and a comparator must "be 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" (**Shamoon** above).

Burden of proof

21. The burden of proof is set out in **section 136 EqA** which provides as follows:

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

22. The leading cases on the burden of proof pre-date the Equality Act (**Igen Ltd v Wong** 2005 EWCA Civ 142 and **Madarassy v Nomura international Plc** 2007 EWCA Civ 33, [2007] IRLR 246) but in **Hewage v Grampian Health Board** 2012 the Supreme Court approved the guidance given in **Igen** and **Madarassy**.

23. By virtue of section 136, it is for a claimant to prove on the balance of probabilities facts from which the Tribunal could decide, *absent* any explanation from the respondent, that the respondent has discriminated against the claimant. If the claimant does that, the burden of proof shifts to the respondent to show it did not discriminate as alleged.

24. In **Madarassy** the Court of Appeal held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g. sex) and a difference in treatment. This merely gives rise to the possibility of discrimination. Something more is needed. Any inference about subconscious motivation has to be based on solid evidence (**South Wales Police Authority v Johnson** 2014 EWCA Civ 73).

25. The something more required to shift the burden does not represent a significantly high hurdle. In **Denman v. EHRC** [2010] EWCA Civ 1279 the court held that

> *"…the 'more' which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred."*

26. There is a useful summary of the law on the shifting burden of proof in **Field v Steve Pye & Co (KL) Ltd and others** [2022] EAT 68, [2022] IRLR 948. HHJ Tayler put the position as follows:

> *"44. If having heard all of the evidence, the tribunal concludes that there is some evidence that could indicate discrimination but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic, it is permissible for the employment tribunal to reach its conclusion at the second stage only. But again it is hard to see what the advantage is. Where there is evidence that could indicate discrimination there is much to be said for properly grappling with the evidence and deciding whether it is, or is not, sufficient to switch the burden of proof. That will avoid a claimant feeling that the evidence has been swept under the carpet. It is hard to see the disadvantage of stating that there was evidence that was sufficient to shift the burden of proof but that, despite the burden having been shifted, a non-discriminatory reason for the treatment has been made out.*
>
> *45. Particular care should be taken if the reason for moving to the second stage is to avoid the effort of analysing evidence that could be relevant to whether the burden of proof should have shifted at the first stage. This could involve treating the two stages as if hermetically sealed from each other, whereas evidence is not generally like that. It also runs the risk that a claimant will feel that their claim that they have been subject to unlawful discrimination has not received the attention that it merits.*
>
> *46. Where a claimant contends that there is evidence that should result in a shift in the burden of proof they should state concisely what that evidence is in closing submissions, particularly when represented..."*

The 'reason why'

27. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. In **Gould v St John's Downshire Hill** 2021 ICR 1, EAT, Mr Justice Linden, after summarising the established case law stated:

> *"The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the*

> *test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or subconscious."*

28. Perhaps the best description of how the tribunal should approach this question was set out by Lord Nicholls in **Nagarajan v London Regional Transport** 1999 ICR 877, HL when he said:

> *"Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances."*

29. Unreasonable conduct alone is usually not enough to justify an inference of discrimination. As the Court of Appeal noted in **Igen** (above), although unreasonable conduct, that may entitle a Tribunal to draw an inference of discrimination. Tribunals should guard against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct "*where there is no evidence of other discriminatory behaviour on such ground."*

Inherently or subjectively discriminatory treatment

30. It is well established that direct discrimination can arise in one of two ways:

    30.1. where a decision is taken on a ground that is inherently discriminatory — that is, where the ground or reason for the treatment complained of is inherent in the act itself, such as the employer's application of a criterion that differentiates by race, sex, etc. In cases of this kind, what was going on inside the head of the discriminator — whether described as intention, motive, reason or purpose — will be irrelevant or

    30.2. where a decision is taken for a reason that is subjectively discriminatory — that is, where the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the 'mental processes' (whether conscious or unconscious) which led the putative discriminator to do the act

    (see **Amnesty International v Ahmed** 2009 ICR 1450, EAT).

31. This case does not, in our judgment, involve any allegations of inherently discriminatory treatment.

32. In relation to subjectively discriminatory treatment, we consider that the test to be adopted was best expressed by what was then the House of Lords in **Chief Constable of West Yorkshire Police v Khan** 2001 ICR 1065, HL. A tribunal must

ask: why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason? For these purposes, material showing discriminatory conduct or attitudes elsewhere in a particular institution is not always inadmissible in considering the motivation of an individual alleged discriminator. Authoritative material showing that discriminatory conduct or attitudes are widespread in an institution may, depending on the facts, make it more likely that the alleged conduct occurred or that the alleged motivations were operative.

33. However, such material must always be used with care, and a tribunal must in any case identify with specificity the particular reason why it considers the material in question to have probative value as regards the motivation of the alleged discriminator(s) in any particular case (see **Chief Constable of Greater Manchester Police v Bailey** 2017 EWCA Civ 425, CA).

Time limits

34. There is a three-month primary limitation period for bringing the relevant claims under the **EqA (**Section 123). This also provides that, for the purposes of the limitation provisions, conduct extending over a period is to be treated as done at the end of the period.

35. The question of whether conduct is extending over a period has been considered extensively by the courts.

36. In **Commissioner of Police of the Metropolis v Hendricks** [2003] ICR 530 it was held that the focus should be on whether the respondent was responsible for an ongoing situation or a continuing state of affairs in which the less favourabl treatment occurred.

37. Where a claimant makes allegations of a number of acts of discrimination forming a continuing act, only those which the Tribunal concludes are in fact acts of discrimination can form part of the series of acts (see **South Western Ambulance Service NHS Foundation Trust v King** [2019] UKEAT/0056/19/OO).

Credibility

38. We first want to say a word about credibility.

39. This case involves a number of disputes of accounts about what took place in the short period of the claimant's engagement with the respondent. Credibility is therefore a significant issue. For the reasons which follow, and notwithstanding that credibility is not necessarily 'all or nothing', we found the claimant was not a credible witness of fact and where there is a conflict of evidence between the respondent's witness evidence and the claimant's we prefer the respondent's evidence.

40. Assessing credibility is not necessarily straightforward. Peter Jackson LJ in B-M [2021] EWCA Civ 1371 at pp.23-5 stated:

> "*No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives*

> *evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence….*"

41. This tribunal accepts that a witness's demeanour in court is not entirely irrelevant; it can on occasions be instructive. It is usually far easier to tell the truth than to lie. There may be pauses as a witness may try to think through implications and remain consistent. There may be a failure to answer a direct question by deliberately going off at a tangent; so, appearing to answer; but not answering at all. However, the way evidence is given, or 'demeanour' must not be given disproportionate weight. The difficulty some witnesses will have in giving evidence (for a range of reasons) must be taken into account.

42. In analysing witness credibility, we have applied the following matters:

    42.1. **Motivation**. What if anything has the witness to gain or lose through their evidence being accepted and is the witness trying to help the court independently of his or her personal interests/allegiance?

    42.2. **Is there the potential for unconscious bias?** The process of litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty…to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

    42.3. **Is the extent of the recollection (or lack of it) plausible?** This is an issue particularly for those witnesses who claim to be able to recall specific matters with certainty within a general inability to recall other matters with any clarity.

    42.4. **It is witnesses evidence internally consistent (or has the witness changed his or her mind)?**

    42.5. **To what extent is the evidence of any witness consistent, with and/or corroborated by, other evidence (lay, expert, documentary etc)**. This includes considering whether other witnesses broadly agree on matters (bearing in mind that more than one witness could be wrong, but that evidence may provide cross/mutual support.

42.6. **Contemporaneous documentation**. Does the witness take issue with the plain meaning in contemporaneous documentation and if so, on what basis?

43. In this case we have also taken into account that the claimant is young and when the events the case is concerned with occurred, she was just 16 years old. Two years have passed since the relevant events occurred. On the other hand, there is a considerable body of contemporaneous documentation to assist with recall.

44. The claimant took issue a number of times with the obvious meanings in the contemporaneous documentation although there is nothing in the documents to suggest she took issue at the time. and invariably, when Mr Wilson put to her a document's obvious meaning she would respond with the stock phrase 'you could infer that, I don't agree' or some variation of it. But at no point did she explain why the inference she was referring to was one we ought not to accept. Perhaps the starkest example of this relates to the ethnicity of CM. The clear, contemporaneous documentary evidence was that CM is White British. He himself said so in the document at page 475 of the bundle. Through her representative, the claimant's case is that CM is of mixed race, is a person of colour. The relevance of this is dealt with below but in short, as this is a key issue, and as we set out above, rather than debate the matter we asked the respondent to see if CM would attend the tribunal to tell us himself. CM attended on day two. He confirmed that he was or identified as White British. There was nothing about CM to suggest this was implausible. Despite this, the claimant, through her representative insisted that CM was a person of colour, of mixed race, and invited us to find so.

45. The claimant would also use the phrase 'you could infer that' instead of, or actually as a way of avoiding agreeing with almost anything put to her in cross-examination. An example of this is in relation to the document at page 71 of the bundle. This is an email from Ms Motlib to Charlotte Ball. Ms Motilb says "Akia [the claimant] who joined our team is a bit of a star…". Mr Wilson put to the claimant that this was evidence of support for her from Ms Motlib. Her answer was "you could infer [Ms Motlib] supported me" with the implication that she did not agree, and she certainly seemed uncomfortable with simply agreeing what seems obvious on the face of the document. There was no need for inference. The email is clear.

46. Another example is in relation to page 201 of the bundle. The claimant along with her two immediate colleagues was put forward by Ms Motlib for an award for teamwork. When it was put to the claimant that that this was evidence that Ms Motlib supported her she replied "you could infer this was praise, I wouldn't say that" without any explanation as to why not.

47. The claimant claimed to have excellent recall on some specific matters but was generally unable to recall much detail stating, correctly that the events occurred two years ago when she was 16. It seemed to the tribunal that the claimant's recollection was somewhat strategic in that she failed to recall anything which might be construed as not supporting her complaints. We deal with this further below.

48. At points the claimant seemed to find the proceedings amusing and had to be reminded by me on one occasion that we were in a court of law dealing with

serious matters. For large parts of the second day, and at the beginning of the third day we noted that the claimant had turned off her camera and it was not clear that she was in fact in attendance (we can think of no good reason why she should have turned her camera off if she was present).

49. Perhaps the most problematic issue was that in cross examination the claimant seemed to us to confirm that at the time of her original complaint to the respondent, she did not consider that she had been the subject of direct race discrimination (she often referred to herself as having been bullied or harassed although there was no allegation of harassment related to race before us) and she confirmed during cross examination that some allegations of direct race discrimination in the agreed list of issues were not in fact acts of race discrimination. The claimant was clear that she only considered she had been subjected to race discrimination when her parents told her that she had.

50. There is then the issue of the claimant's witness statement. This case concerns 21 allegations of direct race discrimination. The claimant confirmed she drafted her witness statement. She is an intelligent, well-educated young woman. The statement is less than three sides of A4 paper. The claimant's evidence in chief covers only four of the allegations in the agreed list of issues. The reasons for this remained unclear.

51. Finally in relation to the claimant's evidence we note the following general points:

    51.1. other than the allegation about the 'Jamaica comment', none of the allegations are inherently related to or are even obviously referable to race,

    51.2. the claimant's original complaint about Ms Motlib did not make any allegation of race discrimination and under cross-examination, she confirmed that except for the examples of comments related to her father, she did not think the examples in her email were race-related, and finally

    51.3. when Mr Wilson put to the claimant that her evidence that Ms Motlib *"*repeatedly*"* made comments about the claimant's personal or family life, was exaggeration for the purposes of her claim, the claimant agreed saying that *"*you could say, I get what you mean".

52. In contrast, the evidence of the respondent's witnesses was both internally consistent i.e. consistent with each other's evidence, and consistent with the contemporaneous documentation. In her cross-examination particularly of Ms Motlib, Ms Updale did note that there were differences in the way some parts of the evidence were expressed at the time, during the grievance investigation and in the witness statement. But we consider that those differences are not significant. Essentially it amounts to no more than different wording having been used on different occasions to express the same point; it is essentially the same evidence.

53. The respondent's witnesses answered all of the questions put to them even when the same question was put multiple times and answered questions even when their relevance was unclear.

54. As we have said, for all of those reasons, where there is a conflict of evidence between the respondent's witness evidence and the claimant's we prefer the respondent's evidence.

Findings of fact

55. We make the following findings of fact (references are to pages in the bundle). We would add that we set out findings of fact which relate to the issues we have to determine. There were many points raised by Ms Updale in cross-examination of the respondent's witnesses not many of which were directly relevant to the issues, or which went to inferences we may draw or credibility. We mean no disrespect to Ms Updale (or the claimant) by not dealing with absolutely every point she made.

56. The claimant describes her race as 'Black Jamaican-British'.

57. The respondent is a company engaged in the business of renting out commercial vehicles. It employs around 100 people and is part of a larger group of companies.

58. The respondent regularly engages apprentices through Chesterfield college (the college) and in this case the claimant was an apprentice in the finance department working as a finance assistant. The claimant was in fact employed not by the respondent but by a company called Learning Unlimited ATA Limited which is a spin-off company of the college's.

59. The claimant began her apprenticeship on 12 December 2022. It ended on 8 March 2023 with the claimant stating that she no longer wished to continue with the apprenticeship.

60. It was Emma Motlib (EM) who was responsible for engaging and supervising apprentices in the Finance team, and it was she who engaged the claimant. She was aware that the claimant was a person of colour from the outset of their relationship.

61. The unchallenged evidence of EM was that she comes from a large family and her parents did not get married until she was a teenager. She grew up with mixed race siblings, lives near to them and retains a close relationship with them. Her name, Motlib, is in fact the name of the Bangladeshi father of her older siblings.

62. There do not appear to have been any issues raised by the claimant during December 2022. On 12 January 2023 EM, who was the claimant's manager, emailed the claimant along with the other apprentices for whom she was responsible stating,

> "*your flying, well done"* (sic) [64].

63. On the same day EM e-mailed the claimant and the team to say,

> "*Amazing work Akia, well done*" [66].

64. On 13 January 2023 EM e-mailed the wider finance team again praising the claimant as follows

> *"…Akia has been working very hard this week to match off invoices with POs and today is the first time in months that we have dipped under 2000!!! Well done Akia"* [67].

65. On 16 January 2023 EM sent an e-mail to Charlotte Bull about the claimant who had taken her maths GCSE exam early and stated,

> "*Akia, who joined our team is a bit of a star…"* [71].

66. On 16 February 2023 the claimant sent an e-mail to EM with a list of complaints which she had concerning some of EM's behaviour which had made her feel uncomfortable, and she states that "*I don't agree that this treatment is okay*" [72 *et seq*]. The specific matters complained about were:

66.1. the claimant felt as if EM had tried to make her seem *"somewhat incompetent*" in her role and that she was incapable of basic duties,

66.2. that EM makes the claimant's personality seem "*hard to work with*" and that she, the claimant, is horrible to team members,

66.3. that on the question of whether the claimant should contact the bank to get her Citrix login, EM said she would do that for the claimant, this made the claimant feel uncomfortable as though EM was suggesting that she was not competent enough to do it for herself,

66.4. that EM had, in the previous few days, being checking the claimant's screens every one to two hours making her feel uncomfortable and that EM did not do this with anyone else,

66.5. that EM had become frustrated with the claimant for spending an extra half an hour on her lunch break although the claimant had explained that she was very sick that day and had told EM that,

66.6. that EM had told the claimant, on the day of the long lunch and that she was "*swanning around*" which was disrespectful,

66.7. that two other apprentices, Julie and Morgan always joked about how they do not like each other's colours for the "*statement recs*" and EM had mentioned that the claimant and her colleague, CM had the same problem but instead of finding it funny as she did with Morgan and Julie, EM acted as if it was a problem when the claimant said it, stating that the claimant must get used to the way CM works and focus on working as a team,

66.8. that when the claimant and CM were joking and laughing together as they worked, EM interrupted saying that the claimant's behaviour "*isn't healthy teamwork*" and that the claimant should recognise the work CM does and be appreciative,

66.9. that EM said to the claimant that she did not understand how someone can be in a relationship for 20 years and not get married or how someone can be in a relationship so young, as well as "*how can you be with someone for so long and not get married*" which made the claimant feel uncomfortable because

she had told EM that her mother and father met when her mother was 17 and they had been together for 20 years,

66.10. that EM said that she did not understand why someone would want "*so many kids*" which made the claimant feel uncomfortable as she felt that the comment was uncalled for,

66.11. that on the previous day when the claimant was feeling sick EM asked her if she wanted to get her mother to pick her up, and when the claimant said that her mother was at work, EM replied "*why can't you just get your dad? Doesn't he drive?",* and "*Surely he can come to pick up his own daughter, right?"* which the claimant said offended her and stated that she felt that EM had some kind of "*bad feeling toward my dad, and I find it disrespectful for you to act as if he sees me as unimportant",*

66.12. that on an occasion when the claimant told EM that she had tried to transfer money to her father, her bank required to go into her bank branch EM said that would be for potential fraud and made a big point of the claimant's father being in the room when she, the claimant had made the call to her bank asking the claimant many times "*why did you have your dad right next to you?",* and that EM acted as though the claimant's father was a bad person stating *"well the bank is just trying to protect you, Akia, you don't know your dad's intentions, he might really be a bad person*".

67. On the same day, 16 February 2023 the claimant copied her e-mail to Sarah Frost (Finance Director) and Terry Ottey [76]. The claimant also emailed Sarah Frost on the same day at 13:58 [86] stating

> *"is it OK if I see you regarding the e-mail I sent to you earlier? There's already been more and I'm in need of guidance if that's OK. If you could let me know when you're free that would be amazing, thank you."*

68. Ms Frost e-mailed the claimant back to say that she was free until 2:50 PM [83]. The claimant did not respond to that e-mail.

69. The claimant's complaint e-mail was forwarded to Howard Smith, HR business partner of the banking division of the respondent on 20 February 2023 [89] by Ms Frost who was seeking help in resolving the situation.

70. Ms Frost was then away from the office for two working days and on her return, on 22 February 2023, noted she had received an e-mail from the claimant's mother, Ms Updale [93]. Ms Frost sent an e-mail to Howard Smith telling him about this and referred to a meeting they were to have at 2:00 PM that day [93].

71. Ms Updale's e-mail started by saying,

> "*we are not allowing Akia to come to work today as we are unhappy with the way these issues have been addressed (or not addressed as it stands)".*

72. The e-mail claims that the claimant was being bullied by an adult and that she felt intimidated and scared and therefore the claimant would not be attending the office

until the matter was addressed "*formally and professionally"* [94]. The e-mail also states that the claimant felt "*intimidated and bullied"* it stated that EM had made the derogatory comments and that EM's behaviour towards the claimant was "*discriminatory, derogatory and offensive*". The e-mail raised matters which were not in the claimant's original complaint including alleged comments by EM, specifically,

72.1. *"did your mom and dad have all of their children together",*

72.2. *"your dad could have bad intentions towards you", and*

72.3. *"your mum seems lovely but your dad could be a really bad person".*

73. The e-mail alleges that since the claimant sent her original e-mail of complaint, EM "*has made more racist, derogatory comments*". These were:

73.1. in relation to CM stating that his family heritage is that his mother was Nigerian and Indian EM stated "*ooh so would you ever want to live in Nigeria*" which was an acceptable comment but EM then asked the claimant where her family was from, and when the claimant said that her father's family was from Jamaica, "[EM] *screwed up her face and said 'urgh I would never want to live there, you wouldn't get a job like this over there'",*

73.2. in relation to CM listing the ingredients for the dish of rice and peas, and the claimant seeking to correct him setting out the traditional ingredients, EM interrupted her and said that she needed to stop talking and get more work done.

74. Finally, the email alleged that at a Learning Assessment Review meeting between the claimant and David Mawson, of the college, EM told Mr Mawson that the claimant needed to improve in some areas, but she then told the claimant that she had nothing to improve on.

75. The above e-mail was sent at 8:38 AM and despite it saying that the claimant would not be attending work that day, on the same day at 10:58 AM the claimant sent an e-mail to Sarah Frost to say,

> "*I'm planning to come in for a half-day at work, will you still be available for a meeting"* [96].

76. Ms Frost responded a couple of minutes later to say that she and Howard Smith would be available for a meeting between 2:00 PM and 2:30 PM but also stated,

> "*it's probably best that outside of this meeting you remain off work whilst the investigation takes place*".

77. We find as a fact that this was in accordance with the wishes of the claimant's parents as expressed in the first e-mail to the respondent.

78. The claimant responded at 11:03 AM "*perfect, thank you"* [98]. The fact is that it was clear at this point that the claimant was content both with the proposed meeting and with remaining off work during the investigation.

79. There was a great deal of discussion at the hearing regarding whether the claimant's apprenticeship had been paused or suspended by the respondent or whether, in not requiring the claimant to attend work during the investigation, the respondent was complying with the wishes of the claimant and/or her mother.

80. The discussion centred around Ms Updale's comment in her original e-mail that she and her partner were not comfortable with the claimant attending work unless and until the matter was "*addressed formally and professionally".*

81. Throughout her cross examination of the respondent's witnesses Ms Updale insisted that this meant that once the respondent had determined that the complaint should be investigated the claimant should have been allowed back to work because this was the respondent addressing the concerns formally and professionally. However, Ms Updale's e-mail is ambiguous on the point.

82. The precise wording is important. To give it its full context the e-mail says, "*we are not comfortable with* [the claimant] *being in the office until this is addressed formally and professionally*".

83. In our judgment the most natural reading of this wording is that the claimant would not attend the office until the issue of her complaints was resolved. That is the meaning we give to the word "*addressed*". If the intention was that the claimant would return to work once a process was in a train, then perhaps the better wording would have been something like "we are not comfortable with the claimant being in the office until this is being addressed" or "we are not comfortable with the claimant being in the office until there is an investigation ongoing". In short there is no criticism of the respondent for understanding that the claimant's parents did not want her to attend the office unless and until the complaint had been finally determined.

84. It follows from this that when the claimant telephoned her mother on 22 February 2023 after meeting with Ms Frost and Mr Smith, apparently in tears stating that the respondent was pausing her apprenticeship, she was labouring under a misapprehension. From the respondent's perspective it was not pausing the claimant's apprenticeship, it was complying with the claimant's wishes or rather those of her mother, that she did not attend work until the issues between the claimant and EM were resolved. It seems to the tribunal that Ms Updale's e-mail at [103] simply served to raise the temperature by accusing them of bullying and penalising the claimant.

85. In the event the claimant never returned to work.

86. At some point, given the college was the claimant's employer, the respondent advised the college of the allegations The respondent could not recall precisely when it contacted the college. A great deal of time was spent in cross examination of the respondent's witnesses on this point, with the suggestion that somehow the respondent had done something wrong by not immediately contacting the college in line with some procedure which the claimant seems to think is in place but which

we were not taken to; however, we consider that nothing turns on the point at which the respondent decided to tell the college about what was taking place. The respondent was following its grievance procedure which says nothing about contact with the college because the procedure is designed to deal with complaints by employees. The claimant was not an employee of the respondent, but it was reasonable for them to use that procedure given that in general it can be used for dealing with complaints or concerns raised in the workplace, which is what the claimant was doing.

87. It was decided that Ms Frost would undertake the investigation of the claimant's complaints.

88. Ms Frost and EM are in the same team, are colleagues and friends at work although we accept that they are not friends outside of work. An issue arose during the cross examination of Ms Frost about who decided that Ms Frost should undertake the investigation with the implication that whoever's decision it was, it was done in effect to protect EM from the claimant's complaints. It seems to the tribunal that nothing turns on how the decision was made, but why it was made is a different matter. Given that one of the issues is the investigation, we deal with that below in further detail, but we find as a fact that it would have been preferable for the investigation to have been undertaken by somebody outside of the finance team. We also find as a fact that there were flaws in the investigation, and that it could, and perhaps should have been rather better prepared and executed.

89. A further e-mail was sent to the respondent on 27 February 2023. This e-mail states that it comes from Ms Updale. Ms Updale said that it came from the claimant. In fact, the line in the e-mail which is relevant here is as follows:

> From: *F Updale <[email address of F Updale] > on behalf of F Updale*

90. We have for reasons of privacy not set out the full e-mail address. The key point is that as well as the address, this line in the e-mail states clearly that it comes from and is on behalf of the claimant's mother. We accept that the e-mail which follows is written as though it comes from the claimant, and it ends with "*kind regards, Akia Simmonds"* but the content it gives us some cause for concern about that. The e-mail starts as follows:

> *"I am writing this e-mail to provide the full details of the discriminatory behaviour I have experienced during my time at [*the respondent*]".*

91. However, as she was quite clear from her original complaint, the claimant did not consider that she had been discriminated against, she did not use the word discrimination and she did not refer to race. We know for a fact that it was the claimant's mother who told the claimant that she had been the subject to race discrimination. We consider it inherently unlikely that the claimant would use words such as "*discriminatory behaviour"* and in our view this e-mail was written by the claimant's mother, not the claimant.

92. The investigation into the claimant's concerns was carried out between 22 February 2023 and 6 March 2023. We find as a fact that that was a reasonable amount of time given the number of complaints and the number of witnesses seen.

93. One of the issues in this case is the suggestion that the investigation was carried out without having what is referred to as full information. We understand from the cross examination of Ms Frost that the claimant's concern is that although the respondent had a list of complaints, they had only a brief meeting with the claimant on 22 February 2023 during which they discussed her version of events, but without delving sufficiently into why she says she was upset and more particularly without establishing any possible racial element or connotations of some of the comments purportedly made by EM.

94. We find that although the respondent followed its Grievance Procedure, there was a flaw in the process. The respondent met initially with the claimant which is entirely correct because it is important before undertaking a new investigation that there is a complete understanding of all of the matters which needed to be investigated. At the time of the initial meeting with the claimant, the respondent knew that the allegations were being put by the claimant's mother as allegations of race discrimination, but there appears to have been no consideration of why it was being asserted that some or all of the alleged comments by EM might have a racial element.

95. This meant that the thrust of the investigation was first whether the comments were made and second, if so, whether the claimant was upset by them. Part of the investigation involved asking others whether they were upset by anything EM had said but we accept the point made by the claimant that comments which upset one person or group of people may not upset others. To put it in legal terms this is a case involving subjective rather than inherent discriminatory comments and it is irrelevant to the consideration of whether the comments were discriminatory and whether the claimant was upset by them, whether anybody else viewed them as discriminatory and were upset by them. The upshot of this is that the complaints were not fully investigated. Of course, the question which flows from that is whether, as alleged, that in itself was an act of race discrimination, and we deal with that below.

96. The claimant attended the meeting on 22 February 2023 alone. She did not ask to be accompanied; she had no right under any procedure to be accompanied and save for the fact that she was 16 years old there was no particular reason why she should have been accompanied.

97. There is a criticism of the respondent for not having a note taker to take notes or minutes of that meeting and the respondent conceded in cross examination that it would have been preferable had that been done, but Mr Smith stated that this would have caused delay. We find that evidence surprising given that all that was required was to find somebody to take notes. We accept that Mr Smith took notes which are in the bundle, but we find as a fact that it would have been preferable to have a separate note taker. Having said that, although that would have been preferable, we do not accept Ms Updale's argument that it would have avoided what has occurred, which is a dispute about what took place at the meeting. In our experience whether there are notes or minutes of a meeting does not prevent the parties who attended the meeting taking issue about what was said at that meeting.

98. The investigation report starts at [239]. The critical pages are [242 - 244] as these set out the conclusions reached on the claimant's complaints.

99. Although there was fairly lengthy cross examination of Ms Frost, there was no real challenge to her conclusions. The attack on her was that she was biased in favour of EM from the start and that the bias amounted to less favourable treatment of the claimant because of race. What we would say at this stage is that tracking through the witness evidence obtained by the investigation and the conclusions reached by Ms Frost suggests that the conclusions reached are reasonable based on the responses from the witnesses.

100. Finally, we deal with the ethnicity of CM. The claimant's case appears to be that because CM said that one of his parents or grandparents was of mixed race, he too was of mixed race and that he was either lying or was coerced into lying when he told the tribunal that he was White British.

101. The first point is that the contemporaneous evidence is that CM referred not to a parent of mixed race but to a grandparent. The claimant's case is that by definition therefore, CM is of mixed race. There is of course an almost philosophical problem with this line of reasoning because if we go back far enough everyone is of mixed race (assuming an acceptance of evolution and the very widely accepted 'out of Africa' theory of human development). We do not make this point glibly. Definitions and theories of race go well beyond the remit of this employment tribunal, but we are loathed to tell somebody what their ethnicity is and for our purposes the key point is this; given that CM is not obviously not White British and given that he identifies in that way, is it reasonable to conclude that the respondent believed otherwise, and the short answer to that is it is not. The respondent had no reason to believe that CM was anything other than what he said he was, and what he told the tribunal he was; White British. The significance of this is discussed below.

Discussion and conclusions

102. We turn now to our conclusions on the allegations set out in the list of issues.

103. Turning in effect to our last finding of fact first; the clamant placed great reliance on the purported mistreatment by EM of CM (as he set out in his investigation meeting [187 *et seq*]) asking us to find that it supports the conclusion that EM was racist. But given that in fact CM is White British not only does this not support the claimant's case, as Mr Wilson submits, it entirely undermines it. We agree with Mr Wilson's submission that it demonstrates an apprentice who EM understood to be White British complaining about how she treated him, in a way similar at least in part to how the claimant complains about the way she was treated by EM suggesting that most, if not all of the treatment of which the claimant complains about was not because of race.

104. Having made that general observation, we now turn to each of the specific allegations of direct race discrimination.

The 'bank' issue

105. The claimant's case is that the bank had asked her to go into the branch for fraud reasons; because there was a concern around her attempt to transfer money to her father for the first time [81]. The claimant's evidence was that she did not understand why the bank was questioning the transaction and mentioned this to EM. EM's evidence, which we accept, is that she explained the bank's concern by reference to the bank following its vulnerable customer procedures and likening it to some computer-based training (CBT) EM had recently completed on this. Under cross-examination, the claimant accepted EM did say this

106. The claimant says that during this exchange, EM said,

> "*Remember, you never you know your dad's true intentions"* and that he *"might be a really bad person"*,

107. Although under cross examination the claimant accepted that in the conversation around the bank transfer EM referred to her experience following her CBT training, it is noteworthy that there is no mention of this by the claimant. There is no detail of this allegation in the claimant's witness statement.

108. EM's unchallenged evidence was that in her conversation with Ms Updale on the the evening after the 'bank conversation' no mention was made to her by Ms Updale of any alleged inappropriate comments. Given that Ms Updale said the claimant had come home in tears after the conversation, and given how protective Ms Updale is of her daughter, that is surprising. We conclude that EM did not say either that "*Remember, you never you know your dad's true intentions"* or that he *"might be a really bad person".*

109. We would add, for the sake of completeness that even if those words were used by EM, there is no evidence to support a conclusion that this was because of race. The words are not inherently racist and of the argument that EM was referring to racial (or racist) stereotypes of West Indian men, we agree with the points made by Mr Wilson that there is no evidence that EM held such views, it was not put to her in cross-examination that she did, and against the backdrop of her own family background (above), it is unlikely that she would hold such views.

110. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made by EM. We would add that even if they were, there is no evidence from which we could decide, whether directly or by inference that they were made because of race.

The comments about long-term relationships and number of children

111. It is accepted that none of these comments were directed at the claimant nor is there any suggestion that they were said about the claimant's family. In her

evidence the claimant agreed that if such comments were made, they were made when EM was not talking directly to her.

112. The specific comments in issue are:

112.1. "*How can someone be in a relationship for 20 years and not get married",*

112.2. *"How can someone be in a relationship so young",*

112.3. "*How can you be with someone for so long and not get married",*

112.4. *"I don't understand how someone would want so many kids".*

113. As to the alleged comment around being in a relationship for 20 years and not getting married or being together from a young age, we accept EM's evidence that this conversation concerned a Valentine's gift that Emma Fowler's husband had bought her, and a discussion around the fact they had been together for a long time. This is supported by the evidence of other witnesses who were interviewed as part of the grievance process. Mr Rowe's account is broadly consistent and CM recalls that Emma Fowler had brought something in and there had been a discussion about Valentine's Day presents [190].

114. Nothing in the evidence suggest that EM was being critical of long-term relationships, and we accept that she had no idea of the ages of the claimant's parents.

115. As to the number of children comment, EM does not recall saying this but in any event, we accept her evidence that even if she did it was not because she was in any sense judging that.

116. From the grievance investigation it is clear that some of the witnesses did remember EM making a comment about large families but *"in a jokey way"* [185] or referring to a news article, and that the comment was made in front of the whole office.

117. That does beg the question whether there is any connection to having a large family and race. We note the point made by Mr Wilson that when this was put to the claimant in cross-examination, she seemed surprised that this was an allegation of race discrimination and claimed that she had not specifically said this was race discrimination; when pushed, she said that she did not believe this was race discrimination.

118. If we understood Ms Updale's argument about these comments, it was that people from the West Indies, are stereotyped in that there is a view that they: tend to be in long-term relationships; tend not to marry, or marry late; and tend to have large families. It follows that any derogatory comments about these matters is racially offensive.

119. The difficulty for the tribunal with such an argument is that no evidence was presented to us, whether statistical or otherwise, that people from the West Indies are more likely than people from any other country, or of any other colour or of any

other ethnicity, to have large families or be in long term relationships without marrying. In short, we do not accept, without any such supporting evidence, that comments about these matters have anything to do with race.

120. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made or were not made because of race.

Collecting the claimant from work

121. This allegation is that EM, on an occasion when the claimant felt unwell at work and was being asked about being collected from work, and having said that her mother could not collect her as she was working, said to the claimant,

> *"Why can't you just get your dad? Doesn't he drive?"*,
> *"Surely he can come to pick up his own daughter, right?"*,
> *"If he cared about you he would come and get you"*.

122. There is no reference to the comment "*If he cared about you he would come and get you"* either in the claimant's original email [80 - 82] or in her witness statement. This casts some doubt on the reliability of the claimant's recollection.

123. More significantly there is no inherent race discrimination in these comments, even assuming all were made. And even if the comments are critical, taking the claimant's case at its highest, they are critical of a father who cannot or will not collect his daughter. There is no evidence that EM would have said anything different had the claimant and/or her father been, for example, White British.

124. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made or were not made because of race.

Comment about the claimant "swanning around"

125. EM denies making this comment. There were no apparent witnesses to the comment. We note that the claimant does not refer to the allegation in her witness statement.

126. Taking account of what we have said about credibility, we find the comment was not said.

127. Even if the comment was said, we are at a loss to understand how the claimant says that this was because of race. The comment is not inherently racist and subjectively there is no evidence to conclude that if the comment had been made the motivation was race.

128. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made by EM. We would add that even if they were, there is no evidence from which we could decide, whether directly or by inference that they were made because of race.

Taking a long lunch

129. In her first email where she raises her concerns, the claimant was clear that she had taken a lunch break longer than the 30 minutes she was allowed. She said of EM in the original complaint that,

> *"You also became very frustrated with me for spending an extra half hour on my lunch break, which I am having Trouble understanding as I had already explained my circumstances to you"* [81].

130. The claimant does not address this allegation in her witness statement and at the hearing her position seemed to have changed given the line of questioning adopted by Ms Updale towards EM. This questioning was predicated on the claimant not having taken a longer lunch break than she was entitled to. The impact of this is significant because it changes from the claimant being unhappy that she was criticised for taking a long lunch to EM being wholly unreasonable in criticising the claimant for something she did not do.

131. We are satisfied based on the contemporaneous evidence that the claimant did take a lunch break significantly longer than that to which she was entitled. Although there was a good deal of cross examination based on whether the extra lunchtime taken was 30 minutes or 20 minutes, nothing turns on that in our view. There is no suggestion that EM was waiting with a stopwatch to work out exactly how long the claimant had been taking lunch for. EM knew, and in our judgment, so did the claimant, that the relevant lunch break was significantly in excess of that which was allowed.

132. EM was the claimant's line manager, and it was appropriate for her to remind her team, and therefore the claimant, to keep proper time at work including time taken for lunch.

133. The contemporaneous evidence is that CM was also taken to task about how long he was taking for lunch and some evidence that EM was critical of her staff where they were perceived as not acting in accordance with what was required of them at work. There is nothing surprising about this, she is the manager they are her staff, and she is entitled to supervise them, including criticising them, if they do not meet the standards required by the respondent and our judgment is that this is all that was happening in this case. It is surprising to this tribunal that the claimant would ascribe this criticism to race discrimination for which there is absolutely no evidence.

134. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that

had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

CM's contribution and the "healthy teamwork" issue

135. In her original email [81], the complaint is put as follows:

> *"You then interrupted saying that my behaviour 'isn't healthy teamwork' and that I should recognise the work he does and be appreciative … and you shouted this out to everyone where anyone could've heard"*.

136. In the claimant's witness statement, she says:

> *"[EM] pulled me into her office after saying I had made [CM] uncomfortable and that I wasn't showing good teamworking behaviour"*.

137. When asked about this in cross examination claimant said that both accounts were true, which seems inherently unlikely given that they were talking about exactly the same incident.

138. EM deals with this in some detail in her witness statement. Her recollection was that the allegation is untrue. The claimant had raised concerns about her treatment by CM and of course EM was well aware of that. We accept her evidence that she did not make disparaging or discriminatory remarks about how the claimant and CM worked together and did not make the claimant look bad to anyone in the team. As EM pointed out in her witness statement, and indeed as we have set out in our findings of fact, she was not slow to praise members of her team, including the claimant.

139. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

Comments about Jamaica

140. The allegation is that at some point between 16 and 22 February, EM stated as part of a wider conversation that she would not like to live in Jamaica and believed that it would not be possible to get a job like hers in Jamaica.

141. As Mr Wilson pointed out, given that these are the only alleged comment that have any discernible connection to race, it is surprising that the claimant omits them entirely from her witness statement.

142. EM denies making the statement and her evidence was not challenged in cross examination. In fact, there was no cross examination at all about these alleged comments which, given that they are the only comments which are potentially directly connected with race, is somewhat surprising.

143. As part of the grievance investigation, both CM and Mr Draycott recalled a conversation about Jamaica and in particular about the recipe for rice and peas.

Neither of them recalled EM even being a part of that conversation, let alone making the comments ascribed to her.

144. We conclude that EM did not make the comments.

145. Even if the comments were made, the claimant's evidence was that she did not think that EM does not like Jamaicans.

146. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made by EM. We would add that even if they were, there is no evidence from which we could decide, whether directly or by inference that they were made because of race.

Learning assessment review

147. This allegation is that EM told David Mawson, of the college, that the claimant needed to improve in certain areas but did not specify which, at a learning assessment review meeting between the claimant and Mr Mawson.

148. EM's account in her witness statement was that the claimant confused the question of setting objectives with areas for improvement.

149. As part of the investigation Mr Mawson was contacted. His recollection, recorded at [294] was:

> *"Having spoken with David he confirmed that there was nothing unusual about that meeting and [*EM's*] input was constructive. David stated he can't be more positive in regards to [*EM*] and her management of the apprentices, and that he was shocked Akia was referring to [*EM*]"*

150. We can find no reason not to accept this account about which the respondent's witnesses were not challenged.

151. In any event, even if we accept that EM did say that the claimant needed to improve in certain areas but did not specify which, there is no evidence to suggest this treatment was because of race. EM was merely supervising the claimant.

152. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

Telling the claimant not to speak to colleagues so people could work

153. This allegation is that between 16 and 22 February 2023, EM asked the claimant not to speak with her colleagues to allow everyone to work.

154. When the claimant was asked in cross examination whether she was told not to speak to colleagues because of her race she replied, "*I don't think so, no*".

155. That reply is not surprising given that it would seem to the tribunal to be normal part of workplace supervision, and we, as well apparently as the claimant, see no basis to link it to race.

156. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

The claimant was portrayed as incompetent, hard to work with and mean to colleagues

157. This allegation does not refer to specific comments or incidents indicating that the claimant was portrayed in a particular way but is a more general and unparticularised assertion that EM was endeavouring to portray the claimant in the ways suggested in the allegation.

158. Against that is the contemporaneous evidence of praise given to the claimant by EM including nominating her as part of her team for employee of the month.

159. We pause to note that the paucity of evidence around this point was exemplified in the cross examination of EM. On the question of the employee of the month issue, Ms Updale implied that the claimant was treated less favourably than her two colleagues because her name appeared last in the list of the three nominees. EM Explained that she had listed them by length of service, the claimant being the most recent recruit. It was put to her that she could have listed them alphabetically and when I pointed out to Ms Updale that the claimant's surname would still have put her last in the list, her comment was ‘not if the first names were used’. This seemed to the tribunal to be a somewhat desperate suggestion and simply seeks to highlight that the criticism of EM is on this point at best tenuous and in truth wholly without merit.

160. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination.

Checking the claimant’s screen

161. It is not denied that EM checked the claimant’s screen while she was working. EM checked all of the apprentices’ work. She did it because she was their supervisor, and it was part of her role.

162. The allegation in the list of issues is not that the claimant was subjected to more supervision, it is merely that her screen was checked and as we have said there was no denial of that fact. There has been no attempt whatsoever in this case to provide any evidence or any credible argument about why or how this is related to race. The members of this tribunal have very long experience at work and it is no surprise whatsoever that a manager or supervisor would check the work of the staff for whom they were responsible in all sorts of ways, and there is no reason why that should not include looking at what is on their screen at any particular time, and we are at a loss to understand why anyone would ascribe to that activity any discriminatory motive without any evidence or argument as to why.

163. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Citrix

164. This allegation is that EM offered to make a telephone call on the claimant's behalf regarding her Citrix login, and then failed to do so in the time frame that the claimant expected.

165. The claimant abandoned this allegation in her evidence given in cross examination. She confirmed that she did not believe that EM's treatment of her in respect of her access to Citrix was to do with her race.

166. For those reasons we find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination.

Contract of work

167. This allegation is the respondent failed to give the claimant a contract of work and is perhaps the most egregious of the allegations. When this claim was brought, indeed right from the very outset of the apprenticeship, it was known that the claimant was not employed by the respondent and therefore why it should be a matter of race discrimination for the respondent who is not the employer to not give the claimant a contract escapes this tribunal.

168. We agree with the respondent that this alleged detriment is entirely misconceived. The claimant accepts that she was at all times employed by Learning Unlimited ATA Limited (part of The Chesterfield College Group).

169. Of course, it is true that the respondent did not provide a contract of work for the claimant, but the claimant did not suffer any detriment from not having a contract of work issued by the respondent as she was not required to have one. Furthermore, there is no evidence that any other apprentice was treated in any way differently from the claimant and this allegation is wholly without merit.

170. For those reasons we find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination.

An unfair investigation

171. The remaining allegations are all under the general heading: "*A failure by the Respondent to conduct a fair investigation into the Claimant's complaint*".

Failing to contact HR or give a formal response to the claimant's complaints

172. This is another allegation which the tribunal has difficulty understanding why it was made. It is quite clear that from a very early-stage Howard Smith, the HR

business partner for the banking division, was involved in the issues raised by the claimant. It follows that HR were contacted and moreover that the claimant and her mother were well aware of this fact from the very beginning. As we say, why therefore this is an allegation escapes us.

173. As to the second part of the allegation which is that a formal response was not received, this is equally strange given that there is a trail of emails and paperwork confirming that there was an investigation and an investigation report. Indeed, there were attempts by the respondent to respond to the claimant in person, but she did not wish to meet with the respondent and so the response was provided through the college.

174. In short, there was no failure to contact HR and there was a formal response to the claimant's complaints, and it is not possible to make out a claim for race discrimination or indeed even a detriment in relation to the allegations under this heading.

Requesting that the claimant not come into the office

175. There are two parts to the allegation under this heading which are that there was a request for the claimant not to come into the office whilst an investigation was conducted, and that there was a failure to agree to a return to the office.

176. The unchallenged evidence of Ms Frost was that after the claimant made her complaint, she maintained that she was comfortable carrying on working in the office. However, that changed with Ms Updale's email of 22 February [93/94]. Part of this email was confirmation that the claimant's parents were "*not comfortable*" with her attending the office until the bullying by an adult was "*formally and professionally addressed*".

177. We have discussed the ambiguity of the wording of this e-mail above in some detail and we are of the view that it was a reasonable reading of the wording in the e-mail that the parents of the claimant did not want her to attend work unless and until the issue was resolved and not, as the claimant now contends, until a process had been commenced. The reason that the former reading is reasonable and the latter not, is because the mere commencement of a process would not mean that the claimant would not have been subject to further bullying had she attended work. The matter would have been different once the investigation had been completed and a resolution found or indeed there having been a finding that there was no problem. We consider that it is illogical to accept the claimant's contention as to the meaning of the words in this e-mail. It is a self-serving interpretation which requires some contortion of the normal meaning of the words *"We are not comfortable with [*the claimant*] being in the office until this is addressed formally and professionally"* because how could the claimant know that something had been addressed professionally unless and until it had in fact been addressed? We do not think it reasonable to construe the words "*this is addressed*" as meaning something like 'start a process'. In our experience, when an employee asks for their grievance to be addressed, they mean for it to be resolved, to be dealt with, to get an outcome, and it was not unreasonable for the respondent to conclude the same.

178. In fact, the claimant agreed in cross-examination that the respondent was acceding to her parents' request, that her not coming into the office was, as she said, *"what mum had asked for"*. She also said that, during the meeting with Ms Frost and Mr Smith on 22 February 2023, she was told expressly that whereas the respondent would allow her back to work, her mother did not think she should return.

179. The respondent's position was always clear. Mr Smith's emailed Ms Updale on 22 February 2023 and said,

> *"we understood from your email that you're not comfortable for her to attend the office whilst this is ongoing, and if that is your preference we are happy to accommodate this, however, we are more than happy for Akia to attend the office if she is happy to so whilst the investigation is ongoing"*

180. Note specifically the wording "*whilst the investigation is ongoing*" not, for example "once it has been commenced". Thus, the respondent understood it was complying with the claimant's, and her parents' wishes.

181. In relation to this first part of this allegation we find that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

182. In relation to the second part, it seems to the tribunal that it was Ms Updale who proposed to the respondent that they sign terms with her that she felt would allow her to allow the claimant to return to work. It is no surprise to the tribunal that the respondent rejected that since those terms, which are at [142], included that the respondent commit to doing things it was not required to do and to follow a non-existent set of "escalation criteria".

183. There is no evidence of the respondent ever agreeing to such terms, or indeed any terms, for someone to return to the workplace pending resolution of a grievance and therefore no evidence of less favourable treatment. Furthermore, there is no evidence of any relationship between what was done or not done and race.

184. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Refusing to allow further correspondence from the claimant's mother

185. It is unclear where the claimant says the evidence for this allegation is to be found.

186. Under cross examination Mr Smith accepted that he had asked the college to suggest that Ms Updale refrain from contacting the respondent directly and instead to go through the college in the first instance. That is not the same as refusing to allow Ms Updale to correspond with the respondent, it was merely a way of seeking to manage the correspondence.

187. Mr Smith was questioned on the rationale for this, and his evidence was that in the light of what he saw as Ms Updale's repeated and hostile correspondence to the respondent, coupled with the fact that the respondent was not the claimant's employer and the fact that the correspondence was time consuming to deal with and caused delays in the process, it was an appropriate course of action.

188. There are therefore two points to make about this allegation. The first point is that taken literally the allegation cannot be made out because there is no suggestion that the respondent refused to, for example, read or deal with correspondence from Ms Updale, they merely wished to find a way of filtering receipt of that correspondence. The second point is that the reason the college were asked to get involved has nothing to do with race and everything to do with what the respondent perceived, rightly or wrongly, to be excessive, hostile correspondence which was time consuming to deal with and a cause of delay.

189. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Lying about following procedure

190. This allegation appears to the tribunal to be wholly unparticularised. At all times the respondent said it was following its grievance procedure even though the claimant was not an employee, and the procedure is designed to resolve employment disputes. In the tribunal's view it was appropriate to use an existing procedure.

191. In the tribunal's experience, taking the issue of fairness, there is no requirement on the employer to slavishly follow its procedures. A tribunal would look to see whether what was done was reasonable even if a written procedure was not followed. Of course, the question before us is not one of reasonableness but whether there was less favourable treatment, and the unchallenged evidence of the respondent was that they had never had to formally investigate complaints from an apprentice.

192. The tribunal is of the view that what the respondent did could certainly have been improved upon, and indeed during the course of cross examination both Ms Frost and Mr Smith accepted that what they did could have been improved. But that is not the same as saying that they discriminated against the claimant because of race nor indeed that she was subject to less favourable treatment. Indeed, the unchallenged evidence from the respondent is that the way they implemented the grievance procedure for the claimant is the same as the way they have implemented it for employees in the past. In relation to one specific criticism, which is the absence of a note taker at the original meeting with the claimant, it was

conceded by Mr Smith that in the past they had both had and not had note takers at such meetings and therefore it cannot be said about the claimant was treated less favourably at all, and even if she was that this had anything to do with race. There is simply insufficient evidence from which we could draw an inference of a discriminatory motive for any of the faults that we could identify in the grievance process which the respondent followed in this case.

193. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Attempting to deal with the matter internally rather than in consultation with HR

194. It is difficult to understand what the criticism of the respondent is in this allegation. It suggests that the person making the complaint does not understand the role of human resources in the modern workplace. Human Resources has that title because it is just that, a resource for the rest of the business to use in order to assist with any number of issues related to the workforce which includes everything for workforce planning, reward systems, sickness absence, employees' personal problems, disciplinary matters, capability issues and of course grievances. The idea that it should be a matter of criticism that HR were consulted is, to this tribunal in any event, nothing short of bizarre. We would have been incredibly surprised if the very first port of call for a manager being told that these complaints had been made would not have been HR.

195. It is obvious why HR were consulted and why the matter was dealt with in consultation with them. As the respondent said, contact with HR was made to support the process, it was in no way a detriment to the claimant and had nothing to do with race.

196. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Investigating the complaint without having the full information

197. Without further elucidation it is difficult to understand what the claimant means by "full information". There was some discussion of this at the hearing and we understand the allegation really to amount to a concern that the first meeting with the claimant at which she was asked to be clear about what it was she was concerned about did not explore in sufficient detail her concerns, and more significantly the basis of those concerns. It was suggested by Ms Updale that had there been a more detailed exploration of the causes of the claimant's unhappiness with the way she had been treated, the respondent would have established the link between that treatment and race.

198. We have given that considerable thought. The difficulty we have with this submission is that whatever the claimant would have been asked the fact is at the point at which she met with the respondent to go through her concerns, she did not really believe that she had been the subject of race discrimination, she felt she had been bullied or harassed, and we struggle to see how any amount of questioning could have ascertained from her any connection between how she perceived she was being treated by EM and race.

199. The conclusion we are bound to come to therefore is that although there is a credible criticism of the respondent about that first meeting, for example how much time was set aside for it, the absence of a note taker and perhaps the depth of the questioning of the claimant, we are far from satisfied that those failures are attributable to race and we find that they were not. We are clear, and we hope that the respondent takes on board, that this aspect of their process was inadequate, but to reiterate, even had they carried out a 'perfect' meeting with the claimant we do not see how, given her own view that she was not being discriminated against, they could have unearthed a discriminatory or potentially discriminatory motive for the treatment which the claimant was claiming she suffered.

200. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Failing to allow C to be accompanied to the meeting with Ms Frost and Mr Smith

201. This is another allegation which is difficult to understand why it forms the basis of an allegation of race discrimination. What was in fact put to the respondent's witnesses in cross examination was that the claimant should have been allowed to have somebody with her because of her age. The tribunal would tend to agree with that, but this has nothing to do with race. There was no suggestion in fact, nor evidence from which we could decide that the failure, if failure it be, to ensure that the claimant was accompanied was in any sense motivated by or because of race.

202. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Failure to take minutes of an investigation meeting

203. This refers to the same meeting as the previous allegation, that is to say the meeting on 22 February 2023 between the claimant, Ms Frost and Mr Smith.

204. We have touched on this matter already and the position in short is as follows. Whilst it may have been best practise and preferable to have a note taker at the meeting, there was no requirement for that to be the case. The suggestion that somehow minutes are more reliable than Mr Smith's notes of the meeting is not something this tribunal can accept. The point we have already made is that in our experience whether there are notes or minutes they are equally subject to the

same criticisms and attempts to amend, and people do not differentiate between them. Therefore, there is a note of the meeting, and it is the note made by Mr Smith. Nothing turns on the fact that these are not called minutes; the tribunal's only suggestion would be that it is easier to participate in a meeting if somebody else is taking notes and therefore it may be preferable in such meetings to have somebody who is dedicated to taking notes. The further point is that there is no less favourable treatment in any event because the unchallenged evidence of Mr. Smith is that in such meetings they have both had and not had a note taker. The final point is that there is no evidence to link the failure to have a separate note taker to race.

205. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Failure to acknowledge the claimant's disagreements in revised minutes

206. There is no requirement on an employer to acknowledge or agree with disagreements in minutes or notes of meetings. In the tribunal's experience it is not uncommon for those attending a meeting to have different recollections of what took place and changes to minutes may be accepted or not accepted. We do not consider that any failure to acknowledge that the claimant disagreed with some of the content of minutes amounts to a detriment. But even if it did, no evidence was given as to why we should conclude that any such failure was because of race and we found no evidence from which we could decide or infer that.

207. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

208. For the avoidance of doubt all of the claimant's claims of direct race discrimination fail and are dismissed

_____
Employment Judge Brewer
Date: 28 March 2025

JUDGMENT SENT TO THE PARTIES ON

.....31 March 2025.....

.....

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

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

Recording and Transcription

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

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

APPENDIX

AGREED LIST OF ISSUES

Direct discrimination (s. 13 Equality Act 2010, read with s. 41(1)(b) and (d) Equality Act 20210)

1. In respect of all her allegations, the Claimant relies on her race, which she describes as Black Jamaican-British.

2. The Claimant relies on the following alleged conduct:

a) Alleged derogatory remarks made by Emma Motlib (“Ms Motlib”) to the Claimant at the Respondent’s office as follows:

a. During December 2022, regarding a personal bank transaction for which the Claimant was required to attend a bank branch for anti-fraud purposes, Ms Motlib made remarks implying that it was inappropriate for the Claimant’s father to be present and that he could have ill-intentions towards the Claimant: “Why did you have your Dad right next to you?”, “Well the bank is just trying to protect you, Akia. You don’t know your Dad’s intentions; he might be a really bad person”(paragraph 5 and per emails dated 16 and 22 February 2023, Response to the Respondent’s Request For Further Information (the “RFI Response”));

b. During December 2022 or January 2023, regarding the Claimant’s parents’ decision to be in a relationship for 20 years without getting married, for being in a relationship from a young age, and for having multiple children: “How can someone be in a relationship for 20 years and not get married”, “How can someone be in a relationship so young”, “How can you be with someone for solong and not get married”, “I don’t understand how someone would want so many kids” (RFI Response, per email dated 16 February 2023);

c. During December 2022, regarding the Claimant’s parents’ inability to collect the Claimant from work on an occasion when the Claimant felt unwell, due to her mother working and her father’s childcare responsibilities: "Why can't you just get your dad? Doesn't he drive?", "Surely he can come to pick up his own daughter, right?", “If he cared about you he would come and get you” (RFI Response, per email dated 16 February 2023);

d. During January 2023, regarding the Claimant “swanning around” the office (RFI Response, per email dated 16 February 2023);

e. During January 2023, regarding the Claimant taking a longer lunch break than permitted (RFI Response, per email dated 16 February 2023);

f. During February 2023, regarding the working relationship between the Claimant and a colleague, Connor McKentie, and the need for the Claimant to “recognise” Mr McKentie’s contribution and display “healthy teamwork” (RFI Response, per email dated 16 February 2023);

g. Between 16 and 22 February 2023, regarding Jamaica, where the Claimant’s father’s family is from, and the fact that Ms Motlib would not like to live there and her belief that it would not be possible to get a job like hers in Jamaica (RFI Response, per email dated 22 February 2023);

h. During January or February 2023, regarding the Claimant’s need to improve in certain areas but not specifying which, at a learning assessment review meeting between the Claimant and David Mawson, a representative of Chesterfield College (RFI Response, per email dated 22 February 2023); and

i. Between 16 and 22 February 2023, asking the Claimant not to speak with her colleagues to allow everyone to work (RFI Response, per email dated 27 February 2023);

b) Ms Motlib tried to make the Claimant seem “somewhat incompetent” in her role, “hard to work with”, and “horrible to her [the Claimant’s] team members” (RFI response, per email dated 16 February 2023);

c) Ms Motlib checked the Claimant’s screen while working (RFI Response, per email dated 16 February 2023);

d) Ms Motlib offered to make a telephone call on the Claimant’s behalf regarding her Citrix login, and then failed to do so in the time frame that the Claimant expected (RFI Response, per email dated 16 February 2023);

e) A failure to give the Claimant a contract of work (paragraph 8, RFI Response); and

f) A failure by the Respondent to conduct a fair investigation into the Claimant’s complaint, including:

a. A failure to contact human resources and give a formal response to the Claimant’s complaint regarding the remarks referred to in paragraph 2a), which the Claimant contends she reported by email to Ms Motlib on 16 February 2023 (paragraph 8, RFI Response);

b. A request for the Claimant not to come into the office whilst an investigation was conducted, and a failure to agree to a return to the office (paragraphs 8 and 9, RFI Response);

c. A refusal to allow further correspondence from the Claimant’s mother during the Respondent’s investigation into the Claimant’s complaint (paragraph 8, RFI Response);

d. Lying about following procedure (paragraph 9, RFI Response);

e. Attempting to deal with the matter internally rather than in consultation with human resources (paragraph 9, RFI Response);

f. Investigating the complaint without having the full information (paragraph 9, RFI Response);

g. A failure to allow the Claimant to be accompanied by a representative at a meeting between the Claimant, Sarah Frost and Howard Smith to gain further information about the complaint (paragraphs 8 and 9, RFI Response);

h. A failure to take minutes of an investigation meeting to gain further information about the complaint (paragraph 9, RFI Response); and

i. A failure to acknowledge in revised meeting minutes that the Claimant had disagreed with what was said in a meeting between the Claimant, Howard Smith and Sarah Frost (paragraph 9, RFI Response).

3. Did the alleged conduct happen?

4. If so, did such conduct constitute less favourable treatment of the Claimant by the Respondent?

5. If so, was the Claimant treated less favourably in any of the ways set out at paragraph 2 above because of her race?

6. In respect of each alleged act, the Claimant shall identify by name and job title the identity of any actual comparators on which she relies, or confirm if a hypothetical comparator is being relied upon.

EMPLOYMENT TRIBUNALS

Claimant: Ms A Simmonds

Respondent: Close Brothers Vehicle Hire Limited

Heard at: Midlands East Tribunal via Cloud Video Platform

On: 17, 18 and 19 March 2025

Before: Employment Judge Brewer
Mr A Wood
Mr R Jones

Representation

Claimant: Ms F Updale, Claimant's mother
Respondent: Mr K Wilson, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that all of the claimant's claims of direct race discrimination fail and are dismissed.

REASONS

Introduction

1. This case came before us for a hearing over three days. The claimant was represented by her mother, Ms Updale, and the respondent by Mr. Wilson of Counsel.

2. We had an agreed bundle of documents running to 475 pages, a witness statement from the claimant and from her mother, along with witness statements from the respondent's witnesses; Emma Motlib, Sarah Frost and Howard Smith. We heard oral evidence from all of these witnesses.

3. The tribunal started at 10:00 AM with the intention that there should be some discussion about housekeeping prior to a break for tribunal reading time. As I started speaking, I could hear a child or children in the background and I mentioned that it would be best if that could be avoided at which point Ms Updale said that the noise was coming from her children. I continued but Ms Updale appeared to be speaking to somebody who was off screen and that turned out to be her partner, the claimant's father. I explained that it would be better if everybody listened to my introduction at which point the claimant's father suggested that I was being rude. The claimant attempted to speak directly to the tribunal, but I explained that as she was being represented by her mother, anything she had to say before being sworn in to give evidence should really be through her representative. It is fair to say that this introduction was not what the tribunal expected, and we broke for reading time until 11.30 AM.

4. We reconvened to resume the hearing at 11:30 AM. At this point Ms Updale said that she had emailed a complaint about the tribunal's behaviour to the tribunal office and that she was not prepared to proceed unless and until that was resolved. It was suggested that we take a further 30 minutes, and we agreed to resume at 12 noon.

5. The duty judge confirmed to the tribunal that an e-mail had been received about the morning's events from the claimant's representative. Given that complaints are not dealt with by the employment tribunal but by the JCIO, there was a proposal simply to acknowledge receipt and advise Ms Updale about how to complain. We resumed at 12 noon, and I explained to Ms Updale that she would receive an acknowledgement and information about how to complain and asked whether she was prepared to proceed with the rest of the hearing, and she confirmed that she was. Neither I nor members were in control of the response to Ms Updale's correspondence with the tribunal office.

6. Prior to the beginning of day two of the hearing we were advised that further complaints had been received from Ms Updale. One was addressed directly to me which contained unspecified concerns about the treatment of the claimant/claimant's representative, but also a concern that the promised response from the tribunal office to the original complaint email had not been received.

7. In the event a detailed response was sent by our REJ to Ms Updale explaining the complaint process and confirming that it was up to this tribunal to determine whether the proceedings could continue in all the circumstances. By now the time was 11.00 AM. We explained the reason for the delay in starting to the respondent.

8. Members and I discussed how to proceed. We were mindful that if the case was postponed there could well be a very significant delay in relisting given that currently multi-day cases in Midlands East are being listed in late 2026/early 2027, and this is a case which commenced in 2023. Further, the respondent had incurred no doubt significant costs to date which would be wasted by a postponement, and which might well result in an application for wasted costs. We also considered whether we should recuse ourselves but were satisfied that this tribunal had proceeded very much as expected and as the vast majority of tribunals do, and we could see no reason for recusal.

9. We therefore decided to continue with the hearing, if necessary, in the absence of the claimant/her representative. In the meantime, having received her response, Ms Updale wrote to the tribunal to confirm she would be attending the hearing and proposed starting at 2.00 PM. The tribunal discussed the start time and given that we still had to hear from four witnesses and hear detailed submissions, and given we had already lost time from the allocated three days, we decided that we would start at 11.45 AM.

10. We therefore instructed the clerk to email Ms Updale to confirm that the hearing would recommence at 11.45 AM. All parties arrived on time and day two proceeded.

11. We note that part of the claimant's case was that there were only two members of staff who are not white British working at the respondent being the claimant and another apprentice who we shall refer to as CM. There was some debate about CM's ethnicity because it is plain from the documentation at [475] that CM identified himself as White British. In order to resolve the matter, we asked the respondent if CM could attend the hearing voluntarily, and they helpfully arranged that he did. We deal with his evidence below.

12. On day three we concluded the evidence and submissions, and we reserved our judgment which we set out below.

Issues

13. The agreed list of issues is set out in the Appendix to this judgment.

Law

14. We set out below a brief description of the relevant law.

15. The basic provision in relation to direct discrimination is in section 13 of the Equality Act 2010 as follows:

> *"**13 Direct discrimination***
>
> *(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

16. In this case the claimant was not employed by the respondent. The respondent provides practical training under an apprenticeship model. We consider that sections 55 and 56 of the 2010 Act is engaged. The relevant part of section 55 is as follows:

> *"**55 Employment service-providers***
> ***…***

> *(2) An employment service-provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B)—…*
>
> *(d) by subjecting B to any other detriment."*

17. Section 56 confirms that for the purposes of section 55, the provision of an employment service includes the provision of vocational training. We should add that Mr Wilson argued that the claimant could be a contract worker pursuant to section 41. We agree that is possibility in this case.

18. In relation to direct race discrimination, for present purposes the following are the key principles.

19. Under section 13 Equality Act 2010 (EqA), there are two issues: (a) less favourable treatment and (b) the reason for that less favourable treatment. These questions need not be answered strictly sequentially (**Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337).

20. Given the treatment must be "less favourable" a comparison is required, and a comparator must "be 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" (**Shamoon** above).

Burden of proof

21. The burden of proof is set out in **section 136 EqA** which provides as follows:

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

22. The leading cases on the burden of proof pre-date the Equality Act (**Igen Ltd v Wong** 2005 EWCA Civ 142 and **Madarassy v Nomura international Plc** 2007 EWCA Civ 33, [2007] IRLR 246) but in **Hewage v Grampian Health Board** 2012 the Supreme Court approved the guidance given in **Igen** and **Madarassy**.

23. By virtue of section 136, it is for a claimant to prove on the balance of probabilities facts from which the Tribunal could decide, *absent* any explanation from the respondent, that the respondent has discriminated against the claimant. If the claimant does that, the burden of proof shifts to the respondent to show it did not discriminate as alleged.

24. In **Madarassy** the Court of Appeal held that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (e.g. sex) and a difference in treatment. This merely gives rise to the possibility of discrimination. Something more is needed. Any inference about subconscious motivation has to be based on solid evidence (**South Wales Police Authority v Johnson** 2014 EWCA Civ 73).

25. The something more required to shift the burden does not represent a significantly high hurdle. In **Denman v. EHRC** [2010] EWCA Civ 1279 the court held that

> *"…the 'more' which is needed to create a claim requiring an answer need not be a great deal. In some instances it will be furnished by non-response, or an evasive or untruthful answer, to a statutory questionnaire. In other instances it may be furnished by the context in which the act has allegedly occurred."*

26. There is a useful summary of the law on the shifting burden of proof in **Field v Steve Pye & Co (KL) Ltd and others** [2022] EAT 68, [2022] IRLR 948. HHJ Tayler put the position as follows:

> *"44. If having heard all of the evidence, the tribunal concludes that there is some evidence that could indicate discrimination but, nonetheless, is fully convinced that the impugned treatment was in no sense whatsoever because of the protected characteristic, it is permissible for the employment tribunal to reach its conclusion at the second stage only. But again it is hard to see what the advantage is. Where there is evidence that could indicate discrimination there is much to be said for properly grappling with the evidence and deciding whether it is, or is not, sufficient to switch the burden of proof. That will avoid a claimant feeling that the evidence has been swept under the carpet. It is hard to see the disadvantage of stating that there was evidence that was sufficient to shift the burden of proof but that, despite the burden having been shifted, a non-discriminatory reason for the treatment has been made out.*
>
> *45. Particular care should be taken if the reason for moving to the second stage is to avoid the effort of analysing evidence that could be relevant to whether the burden of proof should have shifted at the first stage. This could involve treating the two stages as if hermetically sealed from each other, whereas evidence is not generally like that. It also runs the risk that a claimant will feel that their claim that they have been subject to unlawful discrimination has not received the attention that it merits.*
>
> *46. Where a claimant contends that there is evidence that should result in a shift in the burden of proof they should state concisely what that evidence is in closing submissions, particularly when represented..."*

The 'reason why'

27. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. In **Gould v St John's Downshire Hill** 2021 ICR 1, EAT, Mr Justice Linden, after summarising the established case law stated:

> *"The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the*

> *test is subjective… For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision… [and] the influence of the protected characteristic may be conscious or subconscious."*

28. Perhaps the best description of how the tribunal should approach this question was set out by Lord Nicholls in **Nagarajan v London Regional Transport** 1999 ICR 877, HL when he said:

> *"Save in obvious cases, answering the crucial question will call for some consideration of the mental processes of the alleged discriminator. Treatment, favourable or unfavourable, is a consequence which follows from a decision. Direct evidence of a decision to discriminate on [protected] grounds will seldom be forthcoming. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances."*

29. Unreasonable conduct alone is usually not enough to justify an inference of discrimination. As the Court of Appeal noted in **Igen** (above), although unreasonable conduct, that may entitle a Tribunal to draw an inference of discrimination. Tribunals should guard against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct "*where there is no evidence of other discriminatory behaviour on such ground."*

Inherently or subjectively discriminatory treatment

30. It is well established that direct discrimination can arise in one of two ways:

    30.1. where a decision is taken on a ground that is inherently discriminatory — that is, where the ground or reason for the treatment complained of is inherent in the act itself, such as the employer's application of a criterion that differentiates by race, sex, etc. In cases of this kind, what was going on inside the head of the discriminator — whether described as intention, motive, reason or purpose — will be irrelevant or

    30.2. where a decision is taken for a reason that is subjectively discriminatory — that is, where the act complained of is not in itself discriminatory but is rendered so by a discriminatory motivation, i.e. by the 'mental processes' (whether conscious or unconscious) which led the putative discriminator to do the act

    (see **Amnesty International v Ahmed** 2009 ICR 1450, EAT).

31. This case does not, in our judgment, involve any allegations of inherently discriminatory treatment.

32. In relation to subjectively discriminatory treatment, we consider that the test to be adopted was best expressed by what was then the House of Lords in **Chief Constable of West Yorkshire Police v Khan** 2001 ICR 1065, HL. A tribunal must

ask: why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason? For these purposes, material showing discriminatory conduct or attitudes elsewhere in a particular institution is not always inadmissible in considering the motivation of an individual alleged discriminator. Authoritative material showing that discriminatory conduct or attitudes are widespread in an institution may, depending on the facts, make it more likely that the alleged conduct occurred or that the alleged motivations were operative.

33. However, such material must always be used with care, and a tribunal must in any case identify with specificity the particular reason why it considers the material in question to have probative value as regards the motivation of the alleged discriminator(s) in any particular case (see **Chief Constable of Greater Manchester Police v Bailey** 2017 EWCA Civ 425, CA).

Time limits

34. There is a three-month primary limitation period for bringing the relevant claims under the **EqA (**Section 123). This also provides that, for the purposes of the limitation provisions, conduct extending over a period is to be treated as done at the end of the period.

35. The question of whether conduct is extending over a period has been considered extensively by the courts.

36. In **Commissioner of Police of the Metropolis v Hendricks** [2003] ICR 530 it was held that the focus should be on whether the respondent was responsible for an ongoing situation or a continuing state of affairs in which the less favourabl treatment occurred.

37. Where a claimant makes allegations of a number of acts of discrimination forming a continuing act, only those which the Tribunal concludes are in fact acts of discrimination can form part of the series of acts (see **South Western Ambulance Service NHS Foundation Trust v King** [2019] UKEAT/0056/19/OO).

Credibility

38. We first want to say a word about credibility.

39. This case involves a number of disputes of accounts about what took place in the short period of the claimant's engagement with the respondent. Credibility is therefore a significant issue. For the reasons which follow, and notwithstanding that credibility is not necessarily 'all or nothing', we found the claimant was not a credible witness of fact and where there is a conflict of evidence between the respondent's witness evidence and the claimant's we prefer the respondent's evidence.

40. Assessing credibility is not necessarily straightforward. Peter Jackson LJ in B-M [2021] EWCA Civ 1371 at pp.23-5 stated:

> "*No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives*

> *evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence….*"

41. This tribunal accepts that a witness's demeanour in court is not entirely irrelevant; it can on occasions be instructive. It is usually far easier to tell the truth than to lie. There may be pauses as a witness may try to think through implications and remain consistent. There may be a failure to answer a direct question by deliberately going off at a tangent; so, appearing to answer; but not answering at all. However, the way evidence is given, or 'demeanour' must not be given disproportionate weight. The difficulty some witnesses will have in giving evidence (for a range of reasons) must be taken into account.

42. In analysing witness credibility, we have applied the following matters:

    42.1. **Motivation**. What if anything has the witness to gain or lose through their evidence being accepted and is the witness trying to help the court independently of his or her personal interests/allegiance?

    42.2. **Is there the potential for unconscious bias?** The process of litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty…to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

    42.3. **Is the extent of the recollection (or lack of it) plausible?** This is an issue particularly for those witnesses who claim to be able to recall specific matters with certainty within a general inability to recall other matters with any clarity.

    42.4. **It is witnesses evidence internally consistent (or has the witness changed his or her mind)?**

    42.5. **To what extent is the evidence of any witness consistent, with and/or corroborated by, other evidence (lay, expert, documentary etc)**. This includes considering whether other witnesses broadly agree on matters (bearing in mind that more than one witness could be wrong, but that evidence may provide cross/mutual support.

42.6. **Contemporaneous documentation**. Does the witness take issue with the plain meaning in contemporaneous documentation and if so, on what basis?

43. In this case we have also taken into account that the claimant is young and when the events the case is concerned with occurred, she was just 16 years old. Two years have passed since the relevant events occurred. On the other hand, there is a considerable body of contemporaneous documentation to assist with recall.

44. The claimant took issue a number of times with the obvious meanings in the contemporaneous documentation although there is nothing in the documents to suggest she took issue at the time. and invariably, when Mr Wilson put to her a document's obvious meaning she would respond with the stock phrase 'you could infer that, I don't agree' or some variation of it. But at no point did she explain why the inference she was referring to was one we ought not to accept. Perhaps the starkest example of this relates to the ethnicity of CM. The clear, contemporaneous documentary evidence was that CM is White British. He himself said so in the document at page 475 of the bundle. Through her representative, the claimant's case is that CM is of mixed race, is a person of colour. The relevance of this is dealt with below but in short, as this is a key issue, and as we set out above, rather than debate the matter we asked the respondent to see if CM would attend the tribunal to tell us himself. CM attended on day two. He confirmed that he was or identified as White British. There was nothing about CM to suggest this was implausible. Despite this, the claimant, through her representative insisted that CM was a person of colour, of mixed race, and invited us to find so.

45. The claimant would also use the phrase 'you could infer that' instead of, or actually as a way of avoiding agreeing with almost anything put to her in cross-examination. An example of this is in relation to the document at page 71 of the bundle. This is an email from Ms Motlib to Charlotte Ball. Ms Motilb says "Akia [the claimant] who joined our team is a bit of a star…". Mr Wilson put to the claimant that this was evidence of support for her from Ms Motlib. Her answer was "you could infer [Ms Motlib] supported me" with the implication that she did not agree, and she certainly seemed uncomfortable with simply agreeing what seems obvious on the face of the document. There was no need for inference. The email is clear.

46. Another example is in relation to page 201 of the bundle. The claimant along with her two immediate colleagues was put forward by Ms Motlib for an award for teamwork. When it was put to the claimant that that this was evidence that Ms Motlib supported her she replied "you could infer this was praise, I wouldn't say that" without any explanation as to why not.

47. The claimant claimed to have excellent recall on some specific matters but was generally unable to recall much detail stating, correctly that the events occurred two years ago when she was 16. It seemed to the tribunal that the claimant's recollection was somewhat strategic in that she failed to recall anything which might be construed as not supporting her complaints. We deal with this further below.

48. At points the claimant seemed to find the proceedings amusing and had to be reminded by me on one occasion that we were in a court of law dealing with

serious matters. For large parts of the second day, and at the beginning of the third day we noted that the claimant had turned off her camera and it was not clear that she was in fact in attendance (we can think of no good reason why she should have turned her camera off if she was present).

49. Perhaps the most problematic issue was that in cross examination the claimant seemed to us to confirm that at the time of her original complaint to the respondent, she did not consider that she had been the subject of direct race discrimination (she often referred to herself as having been bullied or harassed although there was no allegation of harassment related to race before us) and she confirmed during cross examination that some allegations of direct race discrimination in the agreed list of issues were not in fact acts of race discrimination. The claimant was clear that she only considered she had been subjected to race discrimination when her parents told her that she had.

50. There is then the issue of the claimant's witness statement. This case concerns 21 allegations of direct race discrimination. The claimant confirmed she drafted her witness statement. She is an intelligent, well-educated young woman. The statement is less than three sides of A4 paper. The claimant's evidence in chief covers only four of the allegations in the agreed list of issues. The reasons for this remained unclear.

51. Finally in relation to the claimant's evidence we note the following general points:

    51.1. other than the allegation about the 'Jamaica comment', none of the allegations are inherently related to or are even obviously referable to race,

    51.2. the claimant's original complaint about Ms Motlib did not make any allegation of race discrimination and under cross-examination, she confirmed that except for the examples of comments related to her father, she did not think the examples in her email were race-related, and finally

    51.3. when Mr Wilson put to the claimant that her evidence that Ms Motlib *"*repeatedly*"* made comments about the claimant's personal or family life, was exaggeration for the purposes of her claim, the claimant agreed saying that *"*you could say, I get what you mean".

52. In contrast, the evidence of the respondent's witnesses was both internally consistent i.e. consistent with each other's evidence, and consistent with the contemporaneous documentation. In her cross-examination particularly of Ms Motlib, Ms Updale did note that there were differences in the way some parts of the evidence were expressed at the time, during the grievance investigation and in the witness statement. But we consider that those differences are not significant. Essentially it amounts to no more than different wording having been used on different occasions to express the same point; it is essentially the same evidence.

53. The respondent's witnesses answered all of the questions put to them even when the same question was put multiple times and answered questions even when their relevance was unclear.

54. As we have said, for all of those reasons, where there is a conflict of evidence between the respondent's witness evidence and the claimant's we prefer the respondent's evidence.

Findings of fact

55. We make the following findings of fact (references are to pages in the bundle). We would add that we set out findings of fact which relate to the issues we have to determine. There were many points raised by Ms Updale in cross-examination of the respondent's witnesses not many of which were directly relevant to the issues, or which went to inferences we may draw or credibility. We mean no disrespect to Ms Updale (or the claimant) by not dealing with absolutely every point she made.

56. The claimant describes her race as 'Black Jamaican-British'.

57. The respondent is a company engaged in the business of renting out commercial vehicles. It employs around 100 people and is part of a larger group of companies.

58. The respondent regularly engages apprentices through Chesterfield college (the college) and in this case the claimant was an apprentice in the finance department working as a finance assistant. The claimant was in fact employed not by the respondent but by a company called Learning Unlimited ATA Limited which is a spin-off company of the college's.

59. The claimant began her apprenticeship on 12 December 2022. It ended on 8 March 2023 with the claimant stating that she no longer wished to continue with the apprenticeship.

60. It was Emma Motlib (EM) who was responsible for engaging and supervising apprentices in the Finance team, and it was she who engaged the claimant. She was aware that the claimant was a person of colour from the outset of their relationship.

61. The unchallenged evidence of EM was that she comes from a large family and her parents did not get married until she was a teenager. She grew up with mixed race siblings, lives near to them and retains a close relationship with them. Her name, Motlib, is in fact the name of the Bangladeshi father of her older siblings.

62. There do not appear to have been any issues raised by the claimant during December 2022. On 12 January 2023 EM, who was the claimant's manager, emailed the claimant along with the other apprentices for whom she was responsible stating,

> "*your flying, well done"* (sic) [64].

63. On the same day EM e-mailed the claimant and the team to say,

> "*Amazing work Akia, well done*" [66].

64. On 13 January 2023 EM e-mailed the wider finance team again praising the claimant as follows

> *"…Akia has been working very hard this week to match off invoices with POs and today is the first time in months that we have dipped under 2000!!! Well done Akia"* [67].

65. On 16 January 2023 EM sent an e-mail to Charlotte Bull about the claimant who had taken her maths GCSE exam early and stated,

> "*Akia, who joined our team is a bit of a star…"* [71].

66. On 16 February 2023 the claimant sent an e-mail to EM with a list of complaints which she had concerning some of EM's behaviour which had made her feel uncomfortable, and she states that "*I don't agree that this treatment is okay*" [72 *et seq*]. The specific matters complained about were:

66.1. the claimant felt as if EM had tried to make her seem *"somewhat incompetent*" in her role and that she was incapable of basic duties,

66.2. that EM makes the claimant's personality seem "*hard to work with*" and that she, the claimant, is horrible to team members,

66.3. that on the question of whether the claimant should contact the bank to get her Citrix login, EM said she would do that for the claimant, this made the claimant feel uncomfortable as though EM was suggesting that she was not competent enough to do it for herself,

66.4. that EM had, in the previous few days, being checking the claimant's screens every one to two hours making her feel uncomfortable and that EM did not do this with anyone else,

66.5. that EM had become frustrated with the claimant for spending an extra half an hour on her lunch break although the claimant had explained that she was very sick that day and had told EM that,

66.6. that EM had told the claimant, on the day of the long lunch and that she was "*swanning around*" which was disrespectful,

66.7. that two other apprentices, Julie and Morgan always joked about how they do not like each other's colours for the "*statement recs*" and EM had mentioned that the claimant and her colleague, CM had the same problem but instead of finding it funny as she did with Morgan and Julie, EM acted as if it was a problem when the claimant said it, stating that the claimant must get used to the way CM works and focus on working as a team,

66.8. that when the claimant and CM were joking and laughing together as they worked, EM interrupted saying that the claimant's behaviour "*isn't healthy teamwork*" and that the claimant should recognise the work CM does and be appreciative,

66.9. that EM said to the claimant that she did not understand how someone can be in a relationship for 20 years and not get married or how someone can be in a relationship so young, as well as "*how can you be with someone for so long and not get married*" which made the claimant feel uncomfortable because

she had told EM that her mother and father met when her mother was 17 and they had been together for 20 years,

66.10. that EM said that she did not understand why someone would want "*so many kids*" which made the claimant feel uncomfortable as she felt that the comment was uncalled for,

66.11. that on the previous day when the claimant was feeling sick EM asked her if she wanted to get her mother to pick her up, and when the claimant said that her mother was at work, EM replied "*why can't you just get your dad? Doesn't he drive?",* and "*Surely he can come to pick up his own daughter, right?"* which the claimant said offended her and stated that she felt that EM had some kind of "*bad feeling toward my dad, and I find it disrespectful for you to act as if he sees me as unimportant",*

66.12. that on an occasion when the claimant told EM that she had tried to transfer money to her father, her bank required to go into her bank branch EM said that would be for potential fraud and made a big point of the claimant's father being in the room when she, the claimant had made the call to her bank asking the claimant many times "*why did you have your dad right next to you?",* and that EM acted as though the claimant's father was a bad person stating *"well the bank is just trying to protect you, Akia, you don't know your dad's intentions, he might really be a bad person*".

67. On the same day, 16 February 2023 the claimant copied her e-mail to Sarah Frost (Finance Director) and Terry Ottey [76]. The claimant also emailed Sarah Frost on the same day at 13:58 [86] stating

> *"is it OK if I see you regarding the e-mail I sent to you earlier? There's already been more and I'm in need of guidance if that's OK. If you could let me know when you're free that would be amazing, thank you."*

68. Ms Frost e-mailed the claimant back to say that she was free until 2:50 PM [83]. The claimant did not respond to that e-mail.

69. The claimant's complaint e-mail was forwarded to Howard Smith, HR business partner of the banking division of the respondent on 20 February 2023 [89] by Ms Frost who was seeking help in resolving the situation.

70. Ms Frost was then away from the office for two working days and on her return, on 22 February 2023, noted she had received an e-mail from the claimant's mother, Ms Updale [93]. Ms Frost sent an e-mail to Howard Smith telling him about this and referred to a meeting they were to have at 2:00 PM that day [93].

71. Ms Updale's e-mail started by saying,

> "*we are not allowing Akia to come to work today as we are unhappy with the way these issues have been addressed (or not addressed as it stands)".*

72. The e-mail claims that the claimant was being bullied by an adult and that she felt intimidated and scared and therefore the claimant would not be attending the office

until the matter was addressed "*formally and professionally"* [94]. The e-mail also states that the claimant felt "*intimidated and bullied"* it stated that EM had made the derogatory comments and that EM's behaviour towards the claimant was "*discriminatory, derogatory and offensive*". The e-mail raised matters which were not in the claimant's original complaint including alleged comments by EM, specifically,

72.1. *"did your mom and dad have all of their children together",*

72.2. *"your dad could have bad intentions towards you", and*

72.3. *"your mum seems lovely but your dad could be a really bad person".*

73. The e-mail alleges that since the claimant sent her original e-mail of complaint, EM "*has made more racist, derogatory comments*". These were:

73.1. in relation to CM stating that his family heritage is that his mother was Nigerian and Indian EM stated "*ooh so would you ever want to live in Nigeria*" which was an acceptable comment but EM then asked the claimant where her family was from, and when the claimant said that her father's family was from Jamaica, "[EM] *screwed up her face and said 'urgh I would never want to live there, you wouldn't get a job like this over there'",*

73.2. in relation to CM listing the ingredients for the dish of rice and peas, and the claimant seeking to correct him setting out the traditional ingredients, EM interrupted her and said that she needed to stop talking and get more work done.

74. Finally, the email alleged that at a Learning Assessment Review meeting between the claimant and David Mawson, of the college, EM told Mr Mawson that the claimant needed to improve in some areas, but she then told the claimant that she had nothing to improve on.

75. The above e-mail was sent at 8:38 AM and despite it saying that the claimant would not be attending work that day, on the same day at 10:58 AM the claimant sent an e-mail to Sarah Frost to say,

> "*I'm planning to come in for a half-day at work, will you still be available for a meeting"* [96].

76. Ms Frost responded a couple of minutes later to say that she and Howard Smith would be available for a meeting between 2:00 PM and 2:30 PM but also stated,

> "*it's probably best that outside of this meeting you remain off work whilst the investigation takes place*".

77. We find as a fact that this was in accordance with the wishes of the claimant's parents as expressed in the first e-mail to the respondent.

78. The claimant responded at 11:03 AM "*perfect, thank you"* [98]. The fact is that it was clear at this point that the claimant was content both with the proposed meeting and with remaining off work during the investigation.

79. There was a great deal of discussion at the hearing regarding whether the claimant's apprenticeship had been paused or suspended by the respondent or whether, in not requiring the claimant to attend work during the investigation, the respondent was complying with the wishes of the claimant and/or her mother.

80. The discussion centred around Ms Updale's comment in her original e-mail that she and her partner were not comfortable with the claimant attending work unless and until the matter was "*addressed formally and professionally".*

81. Throughout her cross examination of the respondent's witnesses Ms Updale insisted that this meant that once the respondent had determined that the complaint should be investigated the claimant should have been allowed back to work because this was the respondent addressing the concerns formally and professionally. However, Ms Updale's e-mail is ambiguous on the point.

82. The precise wording is important. To give it its full context the e-mail says, "*we are not comfortable with* [the claimant] *being in the office until this is addressed formally and professionally*".

83. In our judgment the most natural reading of this wording is that the claimant would not attend the office until the issue of her complaints was resolved. That is the meaning we give to the word "*addressed*". If the intention was that the claimant would return to work once a process was in a train, then perhaps the better wording would have been something like "we are not comfortable with the claimant being in the office until this is being addressed" or "we are not comfortable with the claimant being in the office until there is an investigation ongoing". In short there is no criticism of the respondent for understanding that the claimant's parents did not want her to attend the office unless and until the complaint had been finally determined.

84. It follows from this that when the claimant telephoned her mother on 22 February 2023 after meeting with Ms Frost and Mr Smith, apparently in tears stating that the respondent was pausing her apprenticeship, she was labouring under a misapprehension. From the respondent's perspective it was not pausing the claimant's apprenticeship, it was complying with the claimant's wishes or rather those of her mother, that she did not attend work until the issues between the claimant and EM were resolved. It seems to the tribunal that Ms Updale's e-mail at [103] simply served to raise the temperature by accusing them of bullying and penalising the claimant.

85. In the event the claimant never returned to work.

86. At some point, given the college was the claimant's employer, the respondent advised the college of the allegations The respondent could not recall precisely when it contacted the college. A great deal of time was spent in cross examination of the respondent's witnesses on this point, with the suggestion that somehow the respondent had done something wrong by not immediately contacting the college in line with some procedure which the claimant seems to think is in place but which

we were not taken to; however, we consider that nothing turns on the point at which the respondent decided to tell the college about what was taking place. The respondent was following its grievance procedure which says nothing about contact with the college because the procedure is designed to deal with complaints by employees. The claimant was not an employee of the respondent, but it was reasonable for them to use that procedure given that in general it can be used for dealing with complaints or concerns raised in the workplace, which is what the claimant was doing.

87. It was decided that Ms Frost would undertake the investigation of the claimant's complaints.

88. Ms Frost and EM are in the same team, are colleagues and friends at work although we accept that they are not friends outside of work. An issue arose during the cross examination of Ms Frost about who decided that Ms Frost should undertake the investigation with the implication that whoever's decision it was, it was done in effect to protect EM from the claimant's complaints. It seems to the tribunal that nothing turns on how the decision was made, but why it was made is a different matter. Given that one of the issues is the investigation, we deal with that below in further detail, but we find as a fact that it would have been preferable for the investigation to have been undertaken by somebody outside of the finance team. We also find as a fact that there were flaws in the investigation, and that it could, and perhaps should have been rather better prepared and executed.

89. A further e-mail was sent to the respondent on 27 February 2023. This e-mail states that it comes from Ms Updale. Ms Updale said that it came from the claimant. In fact, the line in the e-mail which is relevant here is as follows:

> From: *F Updale <[email address of F Updale] > on behalf of F Updale*

90. We have for reasons of privacy not set out the full e-mail address. The key point is that as well as the address, this line in the e-mail states clearly that it comes from and is on behalf of the claimant's mother. We accept that the e-mail which follows is written as though it comes from the claimant, and it ends with "*kind regards, Akia Simmonds"* but the content it gives us some cause for concern about that. The e-mail starts as follows:

> *"I am writing this e-mail to provide the full details of the discriminatory behaviour I have experienced during my time at [*the respondent*]".*

91. However, as she was quite clear from her original complaint, the claimant did not consider that she had been discriminated against, she did not use the word discrimination and she did not refer to race. We know for a fact that it was the claimant's mother who told the claimant that she had been the subject to race discrimination. We consider it inherently unlikely that the claimant would use words such as "*discriminatory behaviour"* and in our view this e-mail was written by the claimant's mother, not the claimant.

92. The investigation into the claimant's concerns was carried out between 22 February 2023 and 6 March 2023. We find as a fact that that was a reasonable amount of time given the number of complaints and the number of witnesses seen.

93. One of the issues in this case is the suggestion that the investigation was carried out without having what is referred to as full information. We understand from the cross examination of Ms Frost that the claimant's concern is that although the respondent had a list of complaints, they had only a brief meeting with the claimant on 22 February 2023 during which they discussed her version of events, but without delving sufficiently into why she says she was upset and more particularly without establishing any possible racial element or connotations of some of the comments purportedly made by EM.

94. We find that although the respondent followed its Grievance Procedure, there was a flaw in the process. The respondent met initially with the claimant which is entirely correct because it is important before undertaking a new investigation that there is a complete understanding of all of the matters which needed to be investigated. At the time of the initial meeting with the claimant, the respondent knew that the allegations were being put by the claimant's mother as allegations of race discrimination, but there appears to have been no consideration of why it was being asserted that some or all of the alleged comments by EM might have a racial element.

95. This meant that the thrust of the investigation was first whether the comments were made and second, if so, whether the claimant was upset by them. Part of the investigation involved asking others whether they were upset by anything EM had said but we accept the point made by the claimant that comments which upset one person or group of people may not upset others. To put it in legal terms this is a case involving subjective rather than inherent discriminatory comments and it is irrelevant to the consideration of whether the comments were discriminatory and whether the claimant was upset by them, whether anybody else viewed them as discriminatory and were upset by them. The upshot of this is that the complaints were not fully investigated. Of course, the question which flows from that is whether, as alleged, that in itself was an act of race discrimination, and we deal with that below.

96. The claimant attended the meeting on 22 February 2023 alone. She did not ask to be accompanied; she had no right under any procedure to be accompanied and save for the fact that she was 16 years old there was no particular reason why she should have been accompanied.

97. There is a criticism of the respondent for not having a note taker to take notes or minutes of that meeting and the respondent conceded in cross examination that it would have been preferable had that been done, but Mr Smith stated that this would have caused delay. We find that evidence surprising given that all that was required was to find somebody to take notes. We accept that Mr Smith took notes which are in the bundle, but we find as a fact that it would have been preferable to have a separate note taker. Having said that, although that would have been preferable, we do not accept Ms Updale's argument that it would have avoided what has occurred, which is a dispute about what took place at the meeting. In our experience whether there are notes or minutes of a meeting does not prevent the parties who attended the meeting taking issue about what was said at that meeting.

98. The investigation report starts at [239]. The critical pages are [242 - 244] as these set out the conclusions reached on the claimant's complaints.

99. Although there was fairly lengthy cross examination of Ms Frost, there was no real challenge to her conclusions. The attack on her was that she was biased in favour of EM from the start and that the bias amounted to less favourable treatment of the claimant because of race. What we would say at this stage is that tracking through the witness evidence obtained by the investigation and the conclusions reached by Ms Frost suggests that the conclusions reached are reasonable based on the responses from the witnesses.

100. Finally, we deal with the ethnicity of CM. The claimant's case appears to be that because CM said that one of his parents or grandparents was of mixed race, he too was of mixed race and that he was either lying or was coerced into lying when he told the tribunal that he was White British.

101. The first point is that the contemporaneous evidence is that CM referred not to a parent of mixed race but to a grandparent. The claimant's case is that by definition therefore, CM is of mixed race. There is of course an almost philosophical problem with this line of reasoning because if we go back far enough everyone is of mixed race (assuming an acceptance of evolution and the very widely accepted 'out of Africa' theory of human development). We do not make this point glibly. Definitions and theories of race go well beyond the remit of this employment tribunal, but we are loathed to tell somebody what their ethnicity is and for our purposes the key point is this; given that CM is not obviously not White British and given that he identifies in that way, is it reasonable to conclude that the respondent believed otherwise, and the short answer to that is it is not. The respondent had no reason to believe that CM was anything other than what he said he was, and what he told the tribunal he was; White British. The significance of this is discussed below.

Discussion and conclusions

102. We turn now to our conclusions on the allegations set out in the list of issues.

103. Turning in effect to our last finding of fact first; the clamant placed great reliance on the purported mistreatment by EM of CM (as he set out in his investigation meeting [187 *et seq*]) asking us to find that it supports the conclusion that EM was racist. But given that in fact CM is White British not only does this not support the claimant's case, as Mr Wilson submits, it entirely undermines it. We agree with Mr Wilson's submission that it demonstrates an apprentice who EM understood to be White British complaining about how she treated him, in a way similar at least in part to how the claimant complains about the way she was treated by EM suggesting that most, if not all of the treatment of which the claimant complains about was not because of race.

104. Having made that general observation, we now turn to each of the specific allegations of direct race discrimination.

The 'bank' issue

105. The claimant's case is that the bank had asked her to go into the branch for fraud reasons; because there was a concern around her attempt to transfer money to her father for the first time [81]. The claimant's evidence was that she did not understand why the bank was questioning the transaction and mentioned this to EM. EM's evidence, which we accept, is that she explained the bank's concern by reference to the bank following its vulnerable customer procedures and likening it to some computer-based training (CBT) EM had recently completed on this. Under cross-examination, the claimant accepted EM did say this

106. The claimant says that during this exchange, EM said,

> "*Remember, you never you know your dad's true intentions"* and that he *"might be a really bad person"*,

107. Although under cross examination the claimant accepted that in the conversation around the bank transfer EM referred to her experience following her CBT training, it is noteworthy that there is no mention of this by the claimant. There is no detail of this allegation in the claimant's witness statement.

108. EM's unchallenged evidence was that in her conversation with Ms Updale on the the evening after the 'bank conversation' no mention was made to her by Ms Updale of any alleged inappropriate comments. Given that Ms Updale said the claimant had come home in tears after the conversation, and given how protective Ms Updale is of her daughter, that is surprising. We conclude that EM did not say either that "*Remember, you never you know your dad's true intentions"* or that he *"might be a really bad person".*

109. We would add, for the sake of completeness that even if those words were used by EM, there is no evidence to support a conclusion that this was because of race. The words are not inherently racist and of the argument that EM was referring to racial (or racist) stereotypes of West Indian men, we agree with the points made by Mr Wilson that there is no evidence that EM held such views, it was not put to her in cross-examination that she did, and against the backdrop of her own family background (above), it is unlikely that she would hold such views.

110. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made by EM. We would add that even if they were, there is no evidence from which we could decide, whether directly or by inference that they were made because of race.

The comments about long-term relationships and number of children

111. It is accepted that none of these comments were directed at the claimant nor is there any suggestion that they were said about the claimant's family. In her

evidence the claimant agreed that if such comments were made, they were made when EM was not talking directly to her.

112. The specific comments in issue are:

112.1. "*How can someone be in a relationship for 20 years and not get married",*

112.2. *"How can someone be in a relationship so young",*

112.3. "*How can you be with someone for so long and not get married",*

112.4. *"I don't understand how someone would want so many kids".*

113. As to the alleged comment around being in a relationship for 20 years and not getting married or being together from a young age, we accept EM's evidence that this conversation concerned a Valentine's gift that Emma Fowler's husband had bought her, and a discussion around the fact they had been together for a long time. This is supported by the evidence of other witnesses who were interviewed as part of the grievance process. Mr Rowe's account is broadly consistent and CM recalls that Emma Fowler had brought something in and there had been a discussion about Valentine's Day presents [190].

114. Nothing in the evidence suggest that EM was being critical of long-term relationships, and we accept that she had no idea of the ages of the claimant's parents.

115. As to the number of children comment, EM does not recall saying this but in any event, we accept her evidence that even if she did it was not because she was in any sense judging that.

116. From the grievance investigation it is clear that some of the witnesses did remember EM making a comment about large families but *"in a jokey way"* [185] or referring to a news article, and that the comment was made in front of the whole office.

117. That does beg the question whether there is any connection to having a large family and race. We note the point made by Mr Wilson that when this was put to the claimant in cross-examination, she seemed surprised that this was an allegation of race discrimination and claimed that she had not specifically said this was race discrimination; when pushed, she said that she did not believe this was race discrimination.

118. If we understood Ms Updale's argument about these comments, it was that people from the West Indies, are stereotyped in that there is a view that they: tend to be in long-term relationships; tend not to marry, or marry late; and tend to have large families. It follows that any derogatory comments about these matters is racially offensive.

119. The difficulty for the tribunal with such an argument is that no evidence was presented to us, whether statistical or otherwise, that people from the West Indies are more likely than people from any other country, or of any other colour or of any

other ethnicity, to have large families or be in long term relationships without marrying. In short, we do not accept, without any such supporting evidence, that comments about these matters have anything to do with race.

120. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made or were not made because of race.

Collecting the claimant from work

121. This allegation is that EM, on an occasion when the claimant felt unwell at work and was being asked about being collected from work, and having said that her mother could not collect her as she was working, said to the claimant,

> *"Why can't you just get your dad? Doesn't he drive?"*,
> *"Surely he can come to pick up his own daughter, right?"*,
> *"If he cared about you he would come and get you"*.

122. There is no reference to the comment "*If he cared about you he would come and get you"* either in the claimant's original email [80 - 82] or in her witness statement. This casts some doubt on the reliability of the claimant's recollection.

123. More significantly there is no inherent race discrimination in these comments, even assuming all were made. And even if the comments are critical, taking the claimant's case at its highest, they are critical of a father who cannot or will not collect his daughter. There is no evidence that EM would have said anything different had the claimant and/or her father been, for example, White British.

124. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made or were not made because of race.

Comment about the claimant "swanning around"

125. EM denies making this comment. There were no apparent witnesses to the comment. We note that the claimant does not refer to the allegation in her witness statement.

126. Taking account of what we have said about credibility, we find the comment was not said.

127. Even if the comment was said, we are at a loss to understand how the claimant says that this was because of race. The comment is not inherently racist and subjectively there is no evidence to conclude that if the comment had been made the motivation was race.

128. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made by EM. We would add that even if they were, there is no evidence from which we could decide, whether directly or by inference that they were made because of race.

Taking a long lunch

129. In her first email where she raises her concerns, the claimant was clear that she had taken a lunch break longer than the 30 minutes she was allowed. She said of EM in the original complaint that,

> *"You also became very frustrated with me for spending an extra half hour on my lunch break, which I am having Trouble understanding as I had already explained my circumstances to you"* [81].

130. The claimant does not address this allegation in her witness statement and at the hearing her position seemed to have changed given the line of questioning adopted by Ms Updale towards EM. This questioning was predicated on the claimant not having taken a longer lunch break than she was entitled to. The impact of this is significant because it changes from the claimant being unhappy that she was criticised for taking a long lunch to EM being wholly unreasonable in criticising the claimant for something she did not do.

131. We are satisfied based on the contemporaneous evidence that the claimant did take a lunch break significantly longer than that to which she was entitled. Although there was a good deal of cross examination based on whether the extra lunchtime taken was 30 minutes or 20 minutes, nothing turns on that in our view. There is no suggestion that EM was waiting with a stopwatch to work out exactly how long the claimant had been taking lunch for. EM knew, and in our judgment, so did the claimant, that the relevant lunch break was significantly in excess of that which was allowed.

132. EM was the claimant's line manager, and it was appropriate for her to remind her team, and therefore the claimant, to keep proper time at work including time taken for lunch.

133. The contemporaneous evidence is that CM was also taken to task about how long he was taking for lunch and some evidence that EM was critical of her staff where they were perceived as not acting in accordance with what was required of them at work. There is nothing surprising about this, she is the manager they are her staff, and she is entitled to supervise them, including criticising them, if they do not meet the standards required by the respondent and our judgment is that this is all that was happening in this case. It is surprising to this tribunal that the claimant would ascribe this criticism to race discrimination for which there is absolutely no evidence.

134. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that

had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

CM's contribution and the "healthy teamwork" issue

135. In her original email [81], the complaint is put as follows:

> *"You then interrupted saying that my behaviour 'isn't healthy teamwork' and that I should recognise the work he does and be appreciative … and you shouted this out to everyone where anyone could've heard"*.

136. In the claimant's witness statement, she says:

> *"[EM] pulled me into her office after saying I had made [CM] uncomfortable and that I wasn't showing good teamworking behaviour"*.

137. When asked about this in cross examination claimant said that both accounts were true, which seems inherently unlikely given that they were talking about exactly the same incident.

138. EM deals with this in some detail in her witness statement. Her recollection was that the allegation is untrue. The claimant had raised concerns about her treatment by CM and of course EM was well aware of that. We accept her evidence that she did not make disparaging or discriminatory remarks about how the claimant and CM worked together and did not make the claimant look bad to anyone in the team. As EM pointed out in her witness statement, and indeed as we have set out in our findings of fact, she was not slow to praise members of her team, including the claimant.

139. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

Comments about Jamaica

140. The allegation is that at some point between 16 and 22 February, EM stated as part of a wider conversation that she would not like to live in Jamaica and believed that it would not be possible to get a job like hers in Jamaica.

141. As Mr Wilson pointed out, given that these are the only alleged comment that have any discernible connection to race, it is surprising that the claimant omits them entirely from her witness statement.

142. EM denies making the statement and her evidence was not challenged in cross examination. In fact, there was no cross examination at all about these alleged comments which, given that they are the only comments which are potentially directly connected with race, is somewhat surprising.

143. As part of the grievance investigation, both CM and Mr Draycott recalled a conversation about Jamaica and in particular about the recipe for rice and peas.

Neither of them recalled EM even being a part of that conversation, let alone making the comments ascribed to her.

144. We conclude that EM did not make the comments.

145. Even if the comments were made, the claimant's evidence was that she did not think that EM does not like Jamaicans.

146. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made by EM. We would add that even if they were, there is no evidence from which we could decide, whether directly or by inference that they were made because of race.

Learning assessment review

147. This allegation is that EM told David Mawson, of the college, that the claimant needed to improve in certain areas but did not specify which, at a learning assessment review meeting between the claimant and Mr Mawson.

148. EM's account in her witness statement was that the claimant confused the question of setting objectives with areas for improvement.

149. As part of the investigation Mr Mawson was contacted. His recollection, recorded at [294] was:

> *"Having spoken with David he confirmed that there was nothing unusual about that meeting and [*EM's*] input was constructive. David stated he can't be more positive in regards to [*EM*] and her management of the apprentices, and that he was shocked Akia was referring to [*EM*]"*

150. We can find no reason not to accept this account about which the respondent's witnesses were not challenged.

151. In any event, even if we accept that EM did say that the claimant needed to improve in certain areas but did not specify which, there is no evidence to suggest this treatment was because of race. EM was merely supervising the claimant.

152. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

Telling the claimant not to speak to colleagues so people could work

153. This allegation is that between 16 and 22 February 2023, EM asked the claimant not to speak with her colleagues to allow everyone to work.

154. When the claimant was asked in cross examination whether she was told not to speak to colleagues because of her race she replied, "*I don't think so, no*".

155. That reply is not surprising given that it would seem to the tribunal to be normal part of workplace supervision, and we, as well apparently as the claimant, see no basis to link it to race.

156. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

The claimant was portrayed as incompetent, hard to work with and mean to colleagues

157. This allegation does not refer to specific comments or incidents indicating that the claimant was portrayed in a particular way but is a more general and unparticularised assertion that EM was endeavouring to portray the claimant in the ways suggested in the allegation.

158. Against that is the contemporaneous evidence of praise given to the claimant by EM including nominating her as part of her team for employee of the month.

159. We pause to note that the paucity of evidence around this point was exemplified in the cross examination of EM. On the question of the employee of the month issue, Ms Updale implied that the claimant was treated less favourably than her two colleagues because her name appeared last in the list of the three nominees. EM Explained that she had listed them by length of service, the claimant being the most recent recruit. It was put to her that she could have listed them alphabetically and when I pointed out to Ms Updale that the claimant's surname would still have put her last in the list, her comment was ‘not if the first names were used’. This seemed to the tribunal to be a somewhat desperate suggestion and simply seeks to highlight that the criticism of EM is on this point at best tenuous and in truth wholly without merit.

160. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination.

Checking the claimant’s screen

161. It is not denied that EM checked the claimant’s screen while she was working. EM checked all of the apprentices’ work. She did it because she was their supervisor, and it was part of her role.

162. The allegation in the list of issues is not that the claimant was subjected to more supervision, it is merely that her screen was checked and as we have said there was no denial of that fact. There has been no attempt whatsoever in this case to provide any evidence or any credible argument about why or how this is related to race. The members of this tribunal have very long experience at work and it is no surprise whatsoever that a manager or supervisor would check the work of the staff for whom they were responsible in all sorts of ways, and there is no reason why that should not include looking at what is on their screen at any particular time, and we are at a loss to understand why anyone would ascribe to that activity any discriminatory motive without any evidence or argument as to why.

163. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Citrix

164. This allegation is that EM offered to make a telephone call on the claimant's behalf regarding her Citrix login, and then failed to do so in the time frame that the claimant expected.

165. The claimant abandoned this allegation in her evidence given in cross examination. She confirmed that she did not believe that EM's treatment of her in respect of her access to Citrix was to do with her race.

166. For those reasons we find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination.

Contract of work

167. This allegation is the respondent failed to give the claimant a contract of work and is perhaps the most egregious of the allegations. When this claim was brought, indeed right from the very outset of the apprenticeship, it was known that the claimant was not employed by the respondent and therefore why it should be a matter of race discrimination for the respondent who is not the employer to not give the claimant a contract escapes this tribunal.

168. We agree with the respondent that this alleged detriment is entirely misconceived. The claimant accepts that she was at all times employed by Learning Unlimited ATA Limited (part of The Chesterfield College Group).

169. Of course, it is true that the respondent did not provide a contract of work for the claimant, but the claimant did not suffer any detriment from not having a contract of work issued by the respondent as she was not required to have one. Furthermore, there is no evidence that any other apprentice was treated in any way differently from the claimant and this allegation is wholly without merit.

170. For those reasons we find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination.

An unfair investigation

171. The remaining allegations are all under the general heading: "*A failure by the Respondent to conduct a fair investigation into the Claimant's complaint*".

Failing to contact HR or give a formal response to the claimant's complaints

172. This is another allegation which the tribunal has difficulty understanding why it was made. It is quite clear that from a very early-stage Howard Smith, the HR

business partner for the banking division, was involved in the issues raised by the claimant. It follows that HR were contacted and moreover that the claimant and her mother were well aware of this fact from the very beginning. As we say, why therefore this is an allegation escapes us.

173. As to the second part of the allegation which is that a formal response was not received, this is equally strange given that there is a trail of emails and paperwork confirming that there was an investigation and an investigation report. Indeed, there were attempts by the respondent to respond to the claimant in person, but she did not wish to meet with the respondent and so the response was provided through the college.

174. In short, there was no failure to contact HR and there was a formal response to the claimant's complaints, and it is not possible to make out a claim for race discrimination or indeed even a detriment in relation to the allegations under this heading.

Requesting that the claimant not come into the office

175. There are two parts to the allegation under this heading which are that there was a request for the claimant not to come into the office whilst an investigation was conducted, and that there was a failure to agree to a return to the office.

176. The unchallenged evidence of Ms Frost was that after the claimant made her complaint, she maintained that she was comfortable carrying on working in the office. However, that changed with Ms Updale's email of 22 February [93/94]. Part of this email was confirmation that the claimant's parents were "*not comfortable*" with her attending the office until the bullying by an adult was "*formally and professionally addressed*".

177. We have discussed the ambiguity of the wording of this e-mail above in some detail and we are of the view that it was a reasonable reading of the wording in the e-mail that the parents of the claimant did not want her to attend work unless and until the issue was resolved and not, as the claimant now contends, until a process had been commenced. The reason that the former reading is reasonable and the latter not, is because the mere commencement of a process would not mean that the claimant would not have been subject to further bullying had she attended work. The matter would have been different once the investigation had been completed and a resolution found or indeed there having been a finding that there was no problem. We consider that it is illogical to accept the claimant's contention as to the meaning of the words in this e-mail. It is a self-serving interpretation which requires some contortion of the normal meaning of the words *"We are not comfortable with [*the claimant*] being in the office until this is addressed formally and professionally"* because how could the claimant know that something had been addressed professionally unless and until it had in fact been addressed? We do not think it reasonable to construe the words "*this is addressed*" as meaning something like 'start a process'. In our experience, when an employee asks for their grievance to be addressed, they mean for it to be resolved, to be dealt with, to get an outcome, and it was not unreasonable for the respondent to conclude the same.

178. In fact, the claimant agreed in cross-examination that the respondent was acceding to her parents' request, that her not coming into the office was, as she said, *"what mum had asked for"*. She also said that, during the meeting with Ms Frost and Mr Smith on 22 February 2023, she was told expressly that whereas the respondent would allow her back to work, her mother did not think she should return.

179. The respondent's position was always clear. Mr Smith's emailed Ms Updale on 22 February 2023 and said,

> *"we understood from your email that you're not comfortable for her to attend the office whilst this is ongoing, and if that is your preference we are happy to accommodate this, however, we are more than happy for Akia to attend the office if she is happy to so whilst the investigation is ongoing"*

180. Note specifically the wording "*whilst the investigation is ongoing*" not, for example "once it has been commenced". Thus, the respondent understood it was complying with the claimant's, and her parents' wishes.

181. In relation to this first part of this allegation we find that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that these comments were not made because of race.

182. In relation to the second part, it seems to the tribunal that it was Ms Updale who proposed to the respondent that they sign terms with her that she felt would allow her to allow the claimant to return to work. It is no surprise to the tribunal that the respondent rejected that since those terms, which are at [142], included that the respondent commit to doing things it was not required to do and to follow a non-existent set of "escalation criteria".

183. There is no evidence of the respondent ever agreeing to such terms, or indeed any terms, for someone to return to the workplace pending resolution of a grievance and therefore no evidence of less favourable treatment. Furthermore, there is no evidence of any relationship between what was done or not done and race.

184. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Refusing to allow further correspondence from the claimant's mother

185. It is unclear where the claimant says the evidence for this allegation is to be found.

186. Under cross examination Mr Smith accepted that he had asked the college to suggest that Ms Updale refrain from contacting the respondent directly and instead to go through the college in the first instance. That is not the same as refusing to allow Ms Updale to correspond with the respondent, it was merely a way of seeking to manage the correspondence.

187. Mr Smith was questioned on the rationale for this, and his evidence was that in the light of what he saw as Ms Updale's repeated and hostile correspondence to the respondent, coupled with the fact that the respondent was not the claimant's employer and the fact that the correspondence was time consuming to deal with and caused delays in the process, it was an appropriate course of action.

188. There are therefore two points to make about this allegation. The first point is that taken literally the allegation cannot be made out because there is no suggestion that the respondent refused to, for example, read or deal with correspondence from Ms Updale, they merely wished to find a way of filtering receipt of that correspondence. The second point is that the reason the college were asked to get involved has nothing to do with race and everything to do with what the respondent perceived, rightly or wrongly, to be excessive, hostile correspondence which was time consuming to deal with and a cause of delay.

189. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Lying about following procedure

190. This allegation appears to the tribunal to be wholly unparticularised. At all times the respondent said it was following its grievance procedure even though the claimant was not an employee, and the procedure is designed to resolve employment disputes. In the tribunal's view it was appropriate to use an existing procedure.

191. In the tribunal's experience, taking the issue of fairness, there is no requirement on the employer to slavishly follow its procedures. A tribunal would look to see whether what was done was reasonable even if a written procedure was not followed. Of course, the question before us is not one of reasonableness but whether there was less favourable treatment, and the unchallenged evidence of the respondent was that they had never had to formally investigate complaints from an apprentice.

192. The tribunal is of the view that what the respondent did could certainly have been improved upon, and indeed during the course of cross examination both Ms Frost and Mr Smith accepted that what they did could have been improved. But that is not the same as saying that they discriminated against the claimant because of race nor indeed that she was subject to less favourable treatment. Indeed, the unchallenged evidence from the respondent is that the way they implemented the grievance procedure for the claimant is the same as the way they have implemented it for employees in the past. In relation to one specific criticism, which is the absence of a note taker at the original meeting with the claimant, it was

conceded by Mr Smith that in the past they had both had and not had note takers at such meetings and therefore it cannot be said about the claimant was treated less favourably at all, and even if she was that this had anything to do with race. There is simply insufficient evidence from which we could draw an inference of a discriminatory motive for any of the faults that we could identify in the grievance process which the respondent followed in this case.

193. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Attempting to deal with the matter internally rather than in consultation with HR

194. It is difficult to understand what the criticism of the respondent is in this allegation. It suggests that the person making the complaint does not understand the role of human resources in the modern workplace. Human Resources has that title because it is just that, a resource for the rest of the business to use in order to assist with any number of issues related to the workforce which includes everything for workforce planning, reward systems, sickness absence, employees' personal problems, disciplinary matters, capability issues and of course grievances. The idea that it should be a matter of criticism that HR were consulted is, to this tribunal in any event, nothing short of bizarre. We would have been incredibly surprised if the very first port of call for a manager being told that these complaints had been made would not have been HR.

195. It is obvious why HR were consulted and why the matter was dealt with in consultation with them. As the respondent said, contact with HR was made to support the process, it was in no way a detriment to the claimant and had nothing to do with race.

196. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Investigating the complaint without having the full information

197. Without further elucidation it is difficult to understand what the claimant means by "full information". There was some discussion of this at the hearing and we understand the allegation really to amount to a concern that the first meeting with the claimant at which she was asked to be clear about what it was she was concerned about did not explore in sufficient detail her concerns, and more significantly the basis of those concerns. It was suggested by Ms Updale that had there been a more detailed exploration of the causes of the claimant's unhappiness with the way she had been treated, the respondent would have established the link between that treatment and race.

198. We have given that considerable thought. The difficulty we have with this submission is that whatever the claimant would have been asked the fact is at the point at which she met with the respondent to go through her concerns, she did not really believe that she had been the subject of race discrimination, she felt she had been bullied or harassed, and we struggle to see how any amount of questioning could have ascertained from her any connection between how she perceived she was being treated by EM and race.

199. The conclusion we are bound to come to therefore is that although there is a credible criticism of the respondent about that first meeting, for example how much time was set aside for it, the absence of a note taker and perhaps the depth of the questioning of the claimant, we are far from satisfied that those failures are attributable to race and we find that they were not. We are clear, and we hope that the respondent takes on board, that this aspect of their process was inadequate, but to reiterate, even had they carried out a 'perfect' meeting with the claimant we do not see how, given her own view that she was not being discriminated against, they could have unearthed a discriminatory or potentially discriminatory motive for the treatment which the claimant was claiming she suffered.

200. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Failing to allow C to be accompanied to the meeting with Ms Frost and Mr Smith

201. This is another allegation which is difficult to understand why it forms the basis of an allegation of race discrimination. What was in fact put to the respondent's witnesses in cross examination was that the claimant should have been allowed to have somebody with her because of her age. The tribunal would tend to agree with that, but this has nothing to do with race. There was no suggestion in fact, nor evidence from which we could decide that the failure, if failure it be, to ensure that the claimant was accompanied was in any sense motivated by or because of race.

202. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Failure to take minutes of an investigation meeting

203. This refers to the same meeting as the previous allegation, that is to say the meeting on 22 February 2023 between the claimant, Ms Frost and Mr Smith.

204. We have touched on this matter already and the position in short is as follows. Whilst it may have been best practise and preferable to have a note taker at the meeting, there was no requirement for that to be the case. The suggestion that somehow minutes are more reliable than Mr Smith's notes of the meeting is not something this tribunal can accept. The point we have already made is that in our experience whether there are notes or minutes they are equally subject to the

same criticisms and attempts to amend, and people do not differentiate between them. Therefore, there is a note of the meeting, and it is the note made by Mr Smith. Nothing turns on the fact that these are not called minutes; the tribunal's only suggestion would be that it is easier to participate in a meeting if somebody else is taking notes and therefore it may be preferable in such meetings to have somebody who is dedicated to taking notes. The further point is that there is no less favourable treatment in any event because the unchallenged evidence of Mr. Smith is that in such meetings they have both had and not had a note taker. The final point is that there is no evidence to link the failure to have a separate note taker to race.

205. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

Failure to acknowledge the claimant's disagreements in revised minutes

206. There is no requirement on an employer to acknowledge or agree with disagreements in minutes or notes of meetings. In the tribunal's experience it is not uncommon for those attending a meeting to have different recollections of what took place and changes to minutes may be accepted or not accepted. We do not consider that any failure to acknowledge that the claimant disagreed with some of the content of minutes amounts to a detriment. But even if it did, no evidence was given as to why we should conclude that any such failure was because of race and we found no evidence from which we could decide or infer that.

207. We find in relation to this allegation that the claimant has not proved facts from which we could decide that there was direct race discrimination. We also find that had the burden of proof shifted to the claimant they have discharged to burden on them to show that what was done was not because of race.

208. For the avoidance of doubt all of the claimant's claims of direct race discrimination fail and are dismissed

_____
Employment Judge Brewer
Date: 28 March 2025

JUDGMENT SENT TO THE PARTIES ON

.....31 March 2025.....

.....

FOR THE TRIBUNAL OFFICE

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

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

APPENDIX

AGREED LIST OF ISSUES

Direct discrimination (s. 13 Equality Act 2010, read with s. 41(1)(b) and (d) Equality Act 20210)

1. In respect of all her allegations, the Claimant relies on her race, which she describes as Black Jamaican-British.

2. The Claimant relies on the following alleged conduct:

a) Alleged derogatory remarks made by Emma Motlib (“Ms Motlib”) to the Claimant at the Respondent’s office as follows:

a. During December 2022, regarding a personal bank transaction for which the Claimant was required to attend a bank branch for anti-fraud purposes, Ms Motlib made remarks implying that it was inappropriate for the Claimant’s father to be present and that he could have ill-intentions towards the Claimant: “Why did you have your Dad right next to you?”, “Well the bank is just trying to protect you, Akia. You don’t know your Dad’s intentions; he might be a really bad person”(paragraph 5 and per emails dated 16 and 22 February 2023, Response to the Respondent’s Request For Further Information (the “RFI Response”));

b. During December 2022 or January 2023, regarding the Claimant’s parents’ decision to be in a relationship for 20 years without getting married, for being in a relationship from a young age, and for having multiple children: “How can someone be in a relationship for 20 years and not get married”, “How can someone be in a relationship so young”, “How can you be with someone for solong and not get married”, “I don’t understand how someone would want so many kids” (RFI Response, per email dated 16 February 2023);

c. During December 2022, regarding the Claimant’s parents’ inability to collect the Claimant from work on an occasion when the Claimant felt unwell, due to her mother working and her father’s childcare responsibilities: "Why can't you just get your dad? Doesn't he drive?", "Surely he can come to pick up his own daughter, right?", “If he cared about you he would come and get you” (RFI Response, per email dated 16 February 2023);

d. During January 2023, regarding the Claimant “swanning around” the office (RFI Response, per email dated 16 February 2023);

e. During January 2023, regarding the Claimant taking a longer lunch break than permitted (RFI Response, per email dated 16 February 2023);

f. During February 2023, regarding the working relationship between the Claimant and a colleague, Connor McKentie, and the need for the Claimant to “recognise” Mr McKentie’s contribution and display “healthy teamwork” (RFI Response, per email dated 16 February 2023);

g. Between 16 and 22 February 2023, regarding Jamaica, where the Claimant’s father’s family is from, and the fact that Ms Motlib would not like to live there and her belief that it would not be possible to get a job like hers in Jamaica (RFI Response, per email dated 22 February 2023);

h. During January or February 2023, regarding the Claimant’s need to improve in certain areas but not specifying which, at a learning assessment review meeting between the Claimant and David Mawson, a representative of Chesterfield College (RFI Response, per email dated 22 February 2023); and

i. Between 16 and 22 February 2023, asking the Claimant not to speak with her colleagues to allow everyone to work (RFI Response, per email dated 27 February 2023);

b) Ms Motlib tried to make the Claimant seem “somewhat incompetent” in her role, “hard to work with”, and “horrible to her [the Claimant’s] team members” (RFI response, per email dated 16 February 2023);

c) Ms Motlib checked the Claimant’s screen while working (RFI Response, per email dated 16 February 2023);

d) Ms Motlib offered to make a telephone call on the Claimant’s behalf regarding her Citrix login, and then failed to do so in the time frame that the Claimant expected (RFI Response, per email dated 16 February 2023);

e) A failure to give the Claimant a contract of work (paragraph 8, RFI Response); and

f) A failure by the Respondent to conduct a fair investigation into the Claimant’s complaint, including:

a. A failure to contact human resources and give a formal response to the Claimant’s complaint regarding the remarks referred to in paragraph 2a), which the Claimant contends she reported by email to Ms Motlib on 16 February 2023 (paragraph 8, RFI Response);

b. A request for the Claimant not to come into the office whilst an investigation was conducted, and a failure to agree to a return to the office (paragraphs 8 and 9, RFI Response);

c. A refusal to allow further correspondence from the Claimant’s mother during the Respondent’s investigation into the Claimant’s complaint (paragraph 8, RFI Response);

d. Lying about following procedure (paragraph 9, RFI Response);

e. Attempting to deal with the matter internally rather than in consultation with human resources (paragraph 9, RFI Response);

f. Investigating the complaint without having the full information (paragraph 9, RFI Response);

g. A failure to allow the Claimant to be accompanied by a representative at a meeting between the Claimant, Sarah Frost and Howard Smith to gain further information about the complaint (paragraphs 8 and 9, RFI Response);

h. A failure to take minutes of an investigation meeting to gain further information about the complaint (paragraph 9, RFI Response); and

i. A failure to acknowledge in revised meeting minutes that the Claimant had disagreed with what was said in a meeting between the Claimant, Howard Smith and Sarah Frost (paragraph 9, RFI Response).

3. Did the alleged conduct happen?

4. If so, did such conduct constitute less favourable treatment of the Claimant by the Respondent?

5. If so, was the Claimant treated less favourably in any of the ways set out at paragraph 2 above because of her race?

6. In respect of each alleged act, the Claimant shall identify by name and job title the identity of any actual comparators on which she relies, or confirm if a hypothetical comparator is being relied upon.