



# EMPLOYMENT TRIBUNALS

**Claimant:** Marie Antoinette St Joseph  
**Respondent:** Citizens Advice Gateshead  
**Heard at:** Newcastle Employment Tribunal  
**On:** 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup> 28<sup>th</sup> and 31<sup>st</sup> March and 02 April 2025  
**Before:** Employment Judge Sweeney  
D Winter  
G Gallagher

## Appearances

For the Claimant, In person

For the Respondent, Sarah Ismail, counsel

**JUDGMENT** having been given on **02 April 2025** and written reasons for the Judgment having been requested by the Respondent in accordance with Rule 60 of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided.

# WRITTEN REASONS

1. The claims which the tribunal adjudicated on were:

1.1. Direct race discrimination: section 13 Equality Act 2010

1.2. Harassment related to race: section 26 Equality Act 2010.

1.3. Victimisation: section 27 Equality Act 2010.

as set out in the agreed list of issues discussed at the start of the case.

**Preliminary matters**

2. The morning of the first day of the hearing (Tuesday 25 May) was used by the Tribunal for the purposes of reading into the case. The parties attended on for a 2pm start. The parties produced a bundle of documents running to **337 pages**.
3. Before hearing evidence, we discussed a number of preliminary matters with the parties:
  - 3.1. The late exchange of witness statements. Although statements were exchanged late on **19 March 2025**, neither party wished now to object to the other's ability to adduce the statements in evidence. Given the absence of objection and our view that it was in the interests of justice for the statements to be adduced, we gave permission for the statements to be admitted in evidence. Subsequently, Mrs St Joseph raised one point regarding the statement of Claire Hall. She said that she was not on the list of witnesses mentioned by the Respondent back at the case management hearing back in September 2024, therefore felt that the Respondent should not be able to change that. The Tribunal judge explained that at the case management stage, the identification of witnesses a party proposes to call does not mean that they are limited to calling those witnesses. In the end, Ms Hall was not called due to illness.
  - 3.2. The matter of a supplementary bundle of documents referred to by the Claimant in her witness statement. Mrs St Joseph said that she had additional documents in a supplementary bundle which she had hoped to bring today but due to the failure of her printer, she was unable to do so. She said she would bring them the following day. The documents, she said were documents that she had previously disclosed to the Respondent's former solicitors and were not included in the hearing bundle. Ms Ismail took a copy of the list. The Tribunal decided that it would deal with the matter of additional documents the following day when they were before the tribunal. Ms Ismail confirmed that this was no reason not to start the Claimant's evidence. When the Claimant produced the documents on 26 March, they contained calendar entries which contained names of clients. Both were agreed that the names should be redacted. This took up further time. The Tribunal assisted in providing a pen and copies for the bundle. Eventually, the parties prepared an agreed supplementary bundle consisting of 50 pages. References to pages in the supplementary bundle have the letters '**SB**'. An additional document, consisting of a template invite, was added by the Claimant to the main bundle on Friday **28 March 2025** as **page 216A**.
  - 3.3. The issues were as set out in my case management summary of the preliminary hearing on **17 September 2024** at pages **61 – 63**. They are again set out in the appendix at the end of these written reasons. The parties agreed that those remained the issues in the case. Mrs St Joseph confirmed that, in respect of the claim of victimisation, the purported protected act was contained in the email of **02 February 2024** on **page 290** of the bundle. The Respondent did not dispute that the email constituted a protected act.

## **Witnesses**

4. The Claimant gave evidence on her own behalf. The Respondent called the following witnesses:
  - 4.1. Kayleigh Philipson
  - 4.2. Neil Uren
  - 4.3. Judith Wood-Archer
5. As indicated, the Respondent had intended to call **Claire Hall**, Head of HR. However, on **28 March 2025**, **Ms Ismail** said that she had taken ill and that the Respondent would not be calling her.

### **Findings of fact**

6. The following facts are the key facts as found by the Tribunal for the purposes of arriving at a decision on the issues in the case.
7. The Claimant commenced her employment with the Respondent on **09 May 2022** as a Social Welfare Adviser – Level 1 (**'SWA'**). The reference to level 1 reflects that the role is a 'learning role for someone who has already gained some experience of delivering social welfare advice, information and guidance to clients' [page 99]. In brief, as an **SWA**, the Claimant was employed to '*support clients with a wide range of social welfare issues including welfare benefits, employment, money advice, community care, energy, discrimination and housing*' [page 99]. Her duties included advising client and recording case information [page 99].
8. The Claimant was one of five newly recruited **SWAs**, as was **Hazel Featherstone**. **Kayleigh Philipson** line-managed four of those new recruits (3 of whom were subject to probation) including the Claimant and **Ms Featherstone**. **Miss Philipson** was at the time employed as an Advice Project Supervisor. Since **November 2023** or thereabouts, she has been Social Welfare Manager for 'Society Matters CIC', which is a subsidiary of the Respondent.
9. Citizens Advice Gateshead is a charity with the officers being accountable to a board of trustees and ultimately to the Charity's Commission. The charity has to adhere to the governance of the commission, its rules and regulations. It deals with complex issues in a diverse community with high levels of deprivation. The Respondent's main building is the Davidson Building in Gateshead. It also operates a number of advice 'hubs' across the borough. The hubs are busy places. Among other things, they operate 'drop-in' sessions for residents to attend unannounced for advice.
10. One such hub is in Chopwell. Chopwell is an old pit village with a relatively high rate of deprivation relative to other areas. The area is well known to **Miss Philipson**, who used to live there and who managed advisers based at the hub.

### **The Claimant's contract of employment**

11. Clause 7 of the Claimant's contract of employment provided that her employment was subject to a probation period of 6 months during which time she will be required to demonstrate her suitability for the **SWA** position.

### **Probationary policy**

12. The Respondent has a probationary policy **pages 85(a) to 85(g)**. Section 2.1 provides that the policy related to all newly appointed staff whose terms and conditions of employment state their appointment is subject to a probationary period. Section 2.2 provides that '*should staff not successfully complete the probation period within 6 months it can be extended up to a maximum of a further 3 months to allow any performance improvements and objectives to be achieved.*' [page 85(b)].

### **Induction**

13. Following commencement of her employment on **09 May 2022**, the Claimant undertook a one-week period of induction. This involved introductory training on the Respondent's systems and requirements. She was made aware of the performance standards expected and including the expectation that a level 1 adviser was required to see at least 2 clients a day and that client case-notes must be recorded as soon as possible after an appointment – and in any event within 3 days of advice having been given. The Claimant was provided with a weblink to enable her to access People HR. She was told that 1-2-1 documents and probation review documents were stored on the Respondent's systems. Of the 4 **SWAs** managed by **Miss Philipson**, 3 of them (the Claimant included) were new starters. After the period of induction, **Miss Philipson** met with the 3 probationers together and then individually. She showed them where the documents were stored.

### **Case Recording**

14. One of the documents made available to the Claimant right from the outset was the 'Introduction to Case Recording' at **pages 102 – 124**. The Claimant accessed this and printed off her own copy. She did not read the document before she started advising clients. However, she was aware of the need to keep accurate records and to upload the documents on to the Respondent's case management system, 'Casebook'.
15. The document explains the importance of case records, noting that all centres have to go through a Quality of Advice Assessment ('**QAA**') as part of the Performance and Quality Framework ('**PQF**') required to be a member of Citizens Advice [page 105]. It is a helpful and comprehensive document and guidance. Some of the key benefits from keeping records are stated in bullet points:

*“for continuity and to maintain a professional service  
: to handle complaints  
: to reflect the interaction with the client so it can be assessed for the quality of advice which centres must meet as part of the membership of Citizens Advice.  
:to record outcomes and monitor statistics.  
For training purposes  
: to record research and campaigns evidence”*

16. On the subject of when to write case records, it states, among other things, as follows:

*“In busy centres, advisers can feel under pressure to see clients as quickly as possible or to take the next telephone call, rather than take time to write a case record straight after the interview or telephone conversation.”*

*“The policy is that case records should be written as soon as possible, normally straight after the interview. There are advantages to you as an adviser in doing this:*

- *It's clear in your mind what has just been said and done*
- *It gives you time to et your breath back between interviews” [page 118]*

### **Claimant moves to Chopwell**

17. The Respondent expects **SWAs** to obtain what is known as a ‘Generalist Advice Certificate’. This is a type of internal accreditation that provides assurance that advisers are able competently to provide advice across a range of areas, such as housing, employment and welfare. The **SWA** must complete a Learning Assessment Record (‘**LAR**’). In addition, the **SWA** must evidence 3 real cases on which they have advised across different areas which have been recorded within 3 working days of the advice being given. He or she must provide a case study for assessment and be observed during a client interview. The adviser must achieve a Quality of Advice score of 73% on the cases submitted. One of the complaints in this case is that the Claimant was not put forward for her Generalist Advice Certificate.
18. The Respondent makes advisers aware of its expectation that they obtain the certificate and explains the process for obtaining it. That process was clearly explained to the Claimant by, among others, **Kayleigh Philipson** (in addition to the explanations given on induction).
19. Whether a person feels ready or not for assessment is something that can be discussed between the adviser and the line manager. Although the general expectation is that an adviser obtains the certificate within about six months, there is no mandatory time-frame for acquiring the certificate. There are no financial consequences to not having the certificate. However, there may come a point in time where a manager feels that the failure on the part of an adviser to obtain the certificate gives rise to a performance concern. In that case, the manager would discuss the matter with the employee and address the matter potentially through a capability management process. It was for the Claimant, however, to take responsibility for nominating or identifying the three cases for assessment. The line manager would then make arrangements for the cases to be assessed by the national assessor, or Quality Lead, who in this case was Sally Hall, an employee of the Respondent.
20. When she joined in **May 2022**, the Claimant was based at the Davidson building. However, she moved to the Chopwell hub in **July 2022**. She visited the Chopwell hub on **06 July** and commenced working there on **07 July 2022 [page SB4]**. **Ms Featherstone** also moved to the Chopwell hub, although it is unclear when. It can be seen from the Claimant’s calendar [page SB4] that on Thursday **07 July 2022**, she shadowed ‘Thanos’ an existing **SWA** at the

Chopwell hub. From then, she regularly saw clients at drop-in sessions (albeit not every single Thursday) in addition to those she saw on other days as entered in her diary.

21. Chopwell hub's drop-in session was on a Thursday morning. On drop-in days, an adviser would often see more clients than on other days. We are not able to say precisely how many as the evidence on this was unclear. However, we are able to and do find that Thursdays were busier than other days and as a consequence, on occasion the hub might get through as many as 11 residents in a day [page 195]. The drop-in clients would be seen by either the Claimant, **Ms Featherstone** and/or a volunteer, **Nigel**. There came a time when **Ms Featherstone** covered the drop-in sessions at the Winlaton hub. When this happened was never explained. From then, the Claimant saw the bulk of clients on a Thursday morning.

### 1-2-1 Meetings

22. **Kayleigh Philipson** had regular 121 meetings with the Claimant. The first recorded 1-2-1 was in **June 2022** [page 133]. The next was on **20 July 2022** [page 134]. The 1-2-1 scheduled for **August 2022** did not happen due to annual leave. There was a 1-2-1 in **September 2022** [page 136]. Then on **04 October 2022** [page 137]. There was a further 1-2-1 on **04 October 2022** [page 137], then another on **19 December 2022** [page 139]. On that occasion, **Miss Philipson** told the Claimant that her probation was to be extended. The Claimant and **Miss Philipson** met again on **23 January 2023** for an appraisal meeting [page 141 and 259]. There was a further 1-2-1 on **20 February 2023** [page 260]. There was then a second probationary review on **03 April 2023** [pages 176 and 262]. This was followed by a further 1-2-1 meeting on **05 May 2023** [page 263]. Ms Philipson had a quick informal catch up with the Claimant on **25 May 2023** (although it was possibly **23 May 2022**: (see page SB2). The Claimant was on annual leave on **26 May**. The next contact with **Miss Philipson** was the Claimant's email of **27 May 2022** [page 189]. There were no further 1-2-1 meetings after **May 2022**. **Miss Philipson** stepped away from line management not long after the Claimant's complaint of **27 May 2022**.
23. At these 1-2-1 meetings, we find that **Kayleigh Philipson** was doing her best to manage and support the Claimant. It was clear that the Claimant was struggling to upload case records on to the case system in good time. The Claimant knew and understood she was struggling with this. That is not disputed. In any event, it is clear from the evidence of **Miss Philipson** and from the documentary evidence that this was so. The upshot was that the Claimant was taking too long to get cases on to the system. She was slow – for whatever reason. The Claimant is unable to accept that she was slow. Instead, she puts her difficulties in getting cases on to the system in a timely manner down to the overwhelmingly busy nature of the job in an under-resourced organisation. Busy it may have been we do not accept that Mrs St Joseph was overwhelmed by work. We reject this suggestion. The diary entries submitted in evidence by the Claimant do not back this up - even allowing for the possibility that not all the things that she did would have been entered in the diary. The statistics produced by the Respondent's 'adviser dashboard' do not reveal an overwhelmed worker. Nor does the evidence of the Respondent's witnesses, whose evidence we accepted. In **November 2022** the Claimant was recorded as having seen 18 clients [page 321]. Other

data shows that in **January 2023** she saw 24 clients [page 322], **February 2023**, 30 clients [page 323], **March 2023**, 29 clients [page 324], **April 2023**, 26 clients [page 325], **May 2023**, 30 clients [page 326] and **June 2023**, 46 clients [page 327].

24. We are satisfied and so find that the Claimant was slow in getting her case notes on to the system and this created a backlog for her. No other adviser – including **Hazel Featherstone** – had a backlog like the Claimant. The Claimant has interpreted the Respondent's assessment of her being slow as an accusation that she was lazy. However, the Respondent has never suggested anything of the sort. There has been no criticism of the Claimant's efforts or of her commitment. However, the reality is that the Respondent has its standards which is for it to set and for the Claimant to meet. She was not meeting them even though the Respondent reasonably supported her throughout by:

- 24.1. Utilizing an advice coach, **Stuart Keilty**, to assist her with writing up case notes.
- 24.2. **Miss Philipson** checking and advising her on the case notes, helping her create a story so that the note flowed and the quality improved [see page 137, **October 2022**: *'I have been impressed by the progress that MA has made so far'*] [check]
- 24.3. Helping her improve her productivity by permitting her (indeed instructing her) to block out some time in her diary to enable her to address the backlog of case write ups. This was referred to as an issue relating to 'productivity'. **Miss Philipson** encouraged the Claimant to book write up time and to write up cases after completing the appointment [page 137]

25. In **October 2022**, **Miss Philipson** recorded in the 1-2-1 documents that the Claimant was on track to complete all her probation activities [page 137]. The 1-2-1 document is a live document that is accessible by manager and employee alike on the Respondent's internal system. So too are the probation review documents. The Claimant was expected to complete her part of the probation review documents in advance of any review meeting. However, the Claimant did not do this. Instead, **Miss Philipson** endeavoured to capture the essence of the Claimant's comments during the review meeting itself in that, in the course of discussion with the Claimant, she typed the entries under both the manager and employee sections. To the extent that the Claimant alleged in her evidence that **Miss Philipson** had told her and **Heather Featherstone** that they did not need to complete their parts, we reject this. The Claimant was told from the outset that she was to complete the relevant sections of the form (those are the grey boxes on the form [see for example pages 152-154].

26. In around **November 2022**, the Respondent terminated the employment of a white Social Welfare Adviser, **Tanya Ginger**. She too was a probationer and was employed in the same team as the Claimant. She had been employed for coming up to six months when she was dismissed. The reason for termination of her employment was due to concerns regarding her performance.

27. The Claimant alleged that documents such as 1-2-1 documents and probation documents among other things were forged by the Respondent. This was, we find, a totally unmeritorious and unnecessary allegation and was without any merit whatsoever. The Claimant had access to the 1-2-1 and probation documents at the time had she chosen to do so. They were stored on the Respondent's system, on sharepoint.

**Probationary meetings and extension of probation**

28. The Claimant had a probation review meeting with **Miss Philipson** in **October 2022** [page 151 - 160].

29. **Miss Philipson** recorded what she understood the Claimant to say to her as follows:

- 29.1. That she had completed all actions for her probation: all mandatory training and LAR ('Learning Assessment Record') and enquiries.
- 29.2. That she had been recording her minutes and that she know she needs to speed up and be more productive.
- 29.3. That the feedback she has had from **Miss Philipson** since she started working with her and checking her cases has been very helpful, that **Kayleigh Phillipson** had helped her improve her quality which has since been consistently at 100%.
- 29.4. That she has completed the required number of evidence forms.
- 29.5. That she had completed all the training.
- 29.6. That she thinks the work she has completed and the compassion she has shown to her clients demonstrates how she has commitment to the values of the organisation.
- 29.7. That she had a few days of sick leave due to having covid but no other absence outside annual leave.

30. **Miss Philipson** considered that the progress made by the Claimant had been massive. She noted the improvement in quality, noting that the last thing she needed to work on was her productivity and that they would be working on this together. **Miss Philipson** added that:

*"There have been no on-going issues with any of the above. Marie-Antoinette has been a welcomed addition to the team and will, I'm sure, continue to be an asset for the organisation and benefit her clients with her compassion and experience."* [page 155]

31. Under the section 'work standards 'how to you think you've performed' is a table with four areas (customer service, teamwork, timekeeping and attendance, communication, attitude) followed by headings 'good', 'satisfactory' and 'not achieving required standard'. There is a final column for inserting the comments by the employee. The comments of the Claimant, as recorded by **Miss Philipson** under the 'comments' section are all positive – and **Miss**



**Philipson** agreed with them. However, each of the areas contains an 'X' in the column '*not achieving required standard*'. Those 'xs' are inconsistent with the comments. We are entirely satisfied and so find that this was a mistake. It was an oversight on **Miss Philipson's** part. The 'x' had been present on the template form. Had the Claimant completed the form herself, she could have ticked (or marked an 'x') in the 'good' column. As it was, she had not completed any of the forms in advance so it was completed during the meeting by **Miss Philipson**. She had omitted to ensure the 'X' was deleted from the third column and to place it in the first column, indicating 'good'. This oversight came to be repeated in the later probation review document, which we shall come to.

32. **Miss Philipson** captured and recorded the following comment made by the Claimant at that meeting:

*"Improving my quality has been the single most satisfying achievement since I started working for the charity. I was very concerned that it was never going to click, but now it makes sense and I just need to focus on getting quicker."* [page 155]

33. **Miss Philipson** added:

*"I 100% agree with this. Marie-Antoinette has made significant progress and only needs to improve on her productivity and speed and she will be absolutely flying."* [page 156]

34. On **08 December 2022**, **Miss Philipson** completed Part 2 of the Probation Review form [page 158]. In answer to the question 'has the employee successfully completed the probation period?' **Miss Philipson** said 'yes'. She added:

*"Marie-Antoinette has completed all training and is ready to be assessed by Sally Hall for her generalist advice certificate. I am happy to sign her off probation on the basis of the quality of advice I have thus far witnessed. We are continuing to work on her productivity, but I do not believe this to be a reason to fail or extend probation."* [page 159]

35. **Miss Philipson** told the Claimant that she was ready to pass her probation and that she would need to send the probation documents to **Sam Laing**, Community advice Services Manager, for approval. **Mr Laing**, who is no longer with the Respondent, was **Miss Philipson's** line manager and had the final say as to whether a person's probation was approved.

36. The Respondent had recently introduced an 'Advice Dashboard' which enabled it to monitor productivity levels of advisers by reference to metrics such as clients seen, case notes recorded and minutes engaged. After **Miss Philipson** sent her recommendation to **Mr Laing**, on **14 December 2022** he raised with her the matter of the Claimant's productivity [page 164(f)]. He and **Miss Philipson** discussed whether her probation should be passed. **Mr Laing** decided not, based on the productivity figures. On **15 December 2022**, **Miss Philipson** emailed **Mr Laing** [page 164(e)]. That email is consistent with the information

recorded up until that date in the probation documents and 1-2-1 meetings (all documents which the Claimant asserts, without any foundation, were forged). **Miss Philipson** stated in the email:

*“Overall, Marie-Antoinette has made huge amounts of progress. Her quality has now been consistently where it needs to be, and she completed all her probation activities. The probation document has been completed and is with the People Team (Hazel’s is also with them).*

*The only issue is the one that you have highlighted which is productivity. ... In relation to Marie-Antoinette, this is an issue which I have already identified and have been trying to work with her to improve this. She also identified this issue herself as well; just thought you should know that she is self-reflecting on her progress.*

*Up at Chopwell there are significant interruptions from the community centre staff, which I genuinely believe has had a significant impact on both Marie-Antoinette’s and Hazel’s productivity...*

*I am, however, aware that this is not the main issue and that generally Marie-Antionette works at a much slower pace than other advisers. I have been coaching her on her write ups, condensing them down and making them less time consuming, which she is taking on board. I have also structured her calendar more and factored in follow up work time and appointment times and made her clear on how long each appointment and write up should be taking. The difficulty I am continuing to have has been getting Marie-Antoinette to stick with this structure.*

*As discussed with you yesterday, I’m going to go up to Chopwell on Friday morning to have a supporting but clear and firm chat with her about productivity. I have given her a number of tools that she can use to improve this situation but I am open to any further suggestions from both you and Marie-Antoinette herself.”*

37. We are satisfied and so find that the support **Miss Philipson** said she had given the Claimant, she did in fact give. We are also satisfied that **Hazel Featherstone** did not demonstrate the same productivity issues as the Claimant. Unlike **Ms Featherstone**, the Claimant had built up a substantial back-log of case note and was consistently not getting cases on to the system within three days of the advice being given.
38. One of the consequences of building up a backlog is the need to have to catch up. That partially explains why the Claimant was not seeing the number of clients expected of her and it also partially explained why those clients that she did see in a month were not registering on the data for the relevant month, because she was not completing the records on time. This was acknowledged by **Miss Philipson**. Nonetheless, the concerns regarding the Claimant’s ability to produce case reports in a timely fashion were real and genuine. Because of them, and only because of those concerns, **Mr Laing** decided that the Claimant was not ready to be passed for probation. That is what he advised **Miss Philipson**.

39. This meant that **Miss Philipson** would have to explain to the Claimant that her probation was being extended, even though **Miss Philipson** had already said that she was of the view her probation should be approved and that was to be her recommendation. It was awkward in that she was aware that this would very much look to the Claimant that she was backtracking on what she had said. **Miss Phillipson** met with the Claimant on **19 December 2022** to explain the decision and why it had been reached.

#### **19 December 2022**

40. That is precisely what she did. **Miss Philipson** explained to the Claimant that her numbers were not where they needed to be. They discussed the backlog together and how the Claimant would catch up. **Miss Philipson** encouraged the Claimant to block out time. She encouraged the Claimant to write cases up as soon as she had spoken to a client.

41. Neither **Miss Philipson** nor **Mr Laing** followed up in writing with a letter to the Claimant explaining that her probation had been extended. Nor was it explained to her how long the extension was for. That is a failing which **Mr Uren** subsequently identified when he came to investigate the Claimant's complaint. That was undoubtedly a failure in process.

42. The upshot was that the Claimant's probation was extended by an unstated length of time. She was told that matters would be kept under review and that her numbers would be monitored. **Miss Philipson** hoped that the backlog would be reduced, that the Claimant's numbers would improve and that her probation would be approved.

43. One other matter that was discussed at the meeting on **19 December 2022** was an email exchange between the Claimant and **Alex Tod**.

#### **Email exchange between Claimant and Alex Tod**

44. Alex Tod was an HR assistant employed by the Respondent. At 17.50 on **07 December 2022**, the Claimant emailed **Mr Tod** raising a query regarding her personal data [**page 144 & also at page 170**]. She said:

*"I am very concerned that my date of birth was greyed out when I logged into my people HR account today and it was impossible to update it. I also noticed that the gender was none [sic] specific which is quite worrying as I specified this at the beginning when the account was originally set up.*

*Susan sort [sic] clarification on 21/10/22 on behalf of Paul Oliver and I confirmed the correct date to her but for some reason it is still greyed out.*

*When I initially started on 09/05/22, Andrea assisted with arranging for the People HR account to be set up and I completed all personal details which included my date of birth*

*and gender so I do not know why or when it was taken out and why it still remains greyed out.*

*Please could you provide an explanation as to why this has happened and reasons for it.”*

45. The Claimant embedded a screenshot of her computer screen in the email [page 144]. The reference to ‘Susan’ is to **Susan Stewart**, administrator, and the clarification on **21 October 2022** to the email from **Ms Stewart** on page 164. The Claimant emailed **Ms Stewart** on **21 October 2022** saying she ‘*was surprised to note that the information was no longer in my people’s HR account ...*’ [page 163]

46. **Mr Tod** responded at 10.39am on **08 December 2022** as follows:

*“I have updated your date of birth and gender now at your request. The data is greyed out as there are not many reasons why it should change. The date of birth is entered as a standard, I can’t explain why it is not present so it has now been updated. Gender as a functional purpose is People HR is not used but I have updated this to female at your request too.”* [page 145]

47. **Mr Tod** is what is called a ‘super-user’ of the system. That means he has access rights to the system to which others do not and he is able to update information that others are not able to.

48. **Mr Tod** was essentially saying that he did not know why the Claimant’s date of birth was not present but he had now added it as well as the Claimant’s gender. His reply seems to us, as a tribunal of independent fact-finding, to be a fairly straightforward reply and one we would expect to satisfy most people raising the query which the Claimant raised in her email, anyone that is who is not possessed of a deeply distrusting and suspicious mind, such as we are satisfied the Claimant possesses.

49. At 21.46 that evening, the Claimant responded to **Mr Tod** as follows:

*“I am not clear with your explanation. Even if the data is greyed out as you say it should still be displaying the relevant information I entered when the account was set up.*

*I did not ask for my date of birth to be updated by people team, I entered the information myself when the account was created and someone removed the information. You have not been able to tell me who did this and why which was my original enquiry.*

*Susan who is part of your team requested this information on behalf of Paul Oliver since October 2022 but the information has not been entered into my account.*

*You have still not answered my question and I suggest that you escalate it to someone who has higher level access to the network to find out who accessed the account to remove the data I originally entered.”* [page 145/169]

50. When **Miss Philipson** was giving evidence to the tribunal, **Mrs St Joseph** put to her that she had blind copied **Miss Philipson** into these emails with **Mr Tod**. This was in the course of putting to **Miss Philipson** had failed to give her objective support with regards to her emails. This was the first time 'blind copying' had ever been mentioned in the proceedings and the first that **Miss Philipson** had heard of this. However, the Claimant had not blind copied **Miss Philipson**. We are satisfied that the Claimant conceived of this allegation in the moment of cross-examination as she was putting questions to **Miss Philipson** and it was a figment of her imagination at best.
51. In addition to being of a deeply distrusting and suspicious mind, we were struck by the Claimant's apparently unshakeable belief in the infallibility of her own statements. What she says in the final paragraph of her email on **page 145/169** presupposes that she is right about two things: one, that she entered her date of birth and sex directly on to the People HR account and two, that the information had been removed. When asked by the Tribunal judge whether, looking back, she might possibly have been mistaken in saying that she had entered the information onto the People HR system back on **09 May 2022**, she rejected this out of hand as not being possible. She took the tribunal to the email at **page 142** of the bundle to demonstrate the certainty of what she was saying.
52. The Claimant stated with absolute certainty that it was impossible for the email of **09 May 2022** to have been generated if she had not entered both her date of birth and her sex directly onto the People HR system in advance. It was, she said, necessary for her to have entered the data directly in order to receive the email of **09 May**. She sought to persuade us of the certainty of this by describing herself as an intermediate to advanced level IT user, adding that she understands these things and that the two pieces of information (date of birth and sex) were essential pieces of information. It was simply not possible to have received this email without her having inputted that data.
53. This piece of evidence graphically illustrates the Claimant's take on this particular event and on events more widely. We are satisfied and so find that she did not enter any information directly on to the People HR system. What she did was to enter information on to Microsoft forms as carefully described by **Mr Uren** in his evidence. The Tribunal took particular care to ask about and understand how information came to appear on the system. We are entirely satisfied that it happened thus: the Respondent used Microsoft forms for the purposes of gathering information from the Claimant (and others). On **09 May 2022**, the Claimant was provided with a link. Upon clicking on the link, this opened up a form with a number of questions including name, address, next of kin and date of birth. The Claimant was only able to provide the information requested. There was no facility for providing extra information on the form. The form did not require her to identify what sex she was. That was something the Respondent had ceased asking a long time before the Claimant came on the scene. Therefore, when the Claimant says she entered her 'sex' on the form, she did not – despite her absolute certainty to the contrary.

54. When the information was uploaded by the Claimant on to the form, it then went to an excel spreadsheet. The Claimant has no involvement in that. It was **Mr Tod** who populates and populated the spreadsheet. He entered a command function whereupon the information was extracted automatically and put on to the spreadsheet. Each piece of information on the form is linked to a particular cell on the spreadsheet.
55. From the spreadsheet, the information was then uploaded on to People HR. It is here where glitches can occur. Sometimes, particularly with a date of birth, if the numbers are not in the right order or format the system will not pick the information up. An example is if the dates are in the 'Americanised' format; or there may be some other error resulting in the data not being entered.
56. In the Claimant's case – and indeed in the case of a number of others at the time – the date of birth was not uploaded on to People HR. The Respondent does not really know why that happened but **Mr Uren** believes, with more than reasonable grounds, that the most likely explanation is that the digits were in the wrong format. If this happens, the system should then create an error message identifying that there is a blank field. That would ordinarily be sent to **Mr Tod** whose responsibility it would be to manually enter the dates. **Mr Uren** believed that **Mr Tod** missed the error message which meant that the date of birth had never been entered onto People HR. It remained blank or 'greyed out'. That is what we find to be the most plausible and by far the most likely explanation.
57. As regards the data of 'sex', this would and did remain 'greyed out' or unspecified on People HR because it is not data that the Respondent asks for. In the Claimant's case, **Mr Tod** manually entered her sex after her email to him of **07 December 2024** because he interpreted her email as a request for this to be done. He had the ability to amend the sex (even though it is not something the Respondent asks for) because he was a super-user.
58. Therefore, however certain the Claimant was that she entered her information directly on to People HR, she did not. In these proceedings, she rejected out of hand that she entered information onto Microsoft Forms, whereas in fact that is precisely what she did. However, certain the Claimant was that she stated her sex on the form / system on **09 May 2022**, she did not. And however certain the Claimant was that she could not possibly have received the email on **page 142** if she had not entered either her sex or date of birth, she is wrong. All that is needed to generate that email is that an account be opened. That was done without the need for any personal information. All that the email amounts to is confirmation of the employee's username and password – nothing more. The Claimant created the account but the information had already been uploaded to People HR as described above.
59. On **16 December 2022**, **Mr Tod** responded to the Claimant's email of **08 December**. He said:

*"Sorry for the misunderstanding, I thought you were advising that the information was missing and you wanted it added."*

*The form you completed as a new starter that collects this information is a Microsoft Form and is not directly linked to the set up of the people HR account you are referring to. This information is manually transferred to your People HR account. Having had the chance to look into this for you, I can clarify that this information was omitted when you joined due to system issue.*

*I have double checked and audited your account and identified that no changes had been made other than entering the information. I can share with you the excel report which showing the information relating to your People HR account, please let me know if you would like to see this.*

*I took some time to look into the DOB request. The information requesting your DOB was because this information was needed in calculating the age range of employees in a project that was trying to pursue better employee sick pay. Your date of birth was not submitted but it was needed to be used in the calculation process but therefore it was not entered into your People HR account.*

*Hopefully this helps you to understand the reason it was requested but now that the information has been entered into People HR it should not be requested again. If it is please let me know.” [page 146]*

60. The Claimant was not satisfied with **Mr Tod’s** response. On **17 December 2022**, she responded as follows:

*“I am quite disappointed in the lack of transparency in your response below. The response you have provided remains incorrect and inadequate to the enquiry I made originally.*

*I entered my personal details/next of kin and chose my username and password when I first started. So to the contrary in your response, there was no need to transfer these details into People HR as I had already done so. Any other changes to the personal details of the account is deemed as unauthorised and I need to know who did it and why.*

*I was able to view these details when I booked my first holiday for 26/05/22 and 01/06/22.*

*As requested in my previous response I suggest you escalate this to someone who has higher level access to the network to find out who accessed the account to remove the data I originally entered.” [page 147]*

61. It was this exchange of emails that was drawn to **Miss Philipson’s** attention by **Mr Tod** and which was discussed during the meeting on **19 December 2022**. The note made by **Miss Philipson** on **page 139** under ‘Managers’ comments’ is, we find an accurate note of what was discussed. **Mrs St Joseph** alleges that this document (along with several others) is a forgery. We reject that as a wholly unfounded allegation. It is one of a number of scandalous allegations that the Claimant has made in these proceedings – in the sense that they were

made frivolously and without any merit or basis. We further find as a fact that **Miss Philipson** did not say to the Claimant that she should be careful or be nice to **Mr Tod** if she wanted to get her salary or words to that effect. That is pure invention on the Claimant's part.

62. We can understand why **Miss Philipson** considered the emails from the Claimant to be abrupt in tone. **Mr Tod** had given, on our reading of it, a clear explanation. We could not understand why the Claimant should be disappointed in a lack of transparency. Further, the responses were not 'inadequate or incorrect'. They were perfectly adequate and correct. The reality was that the Claimant simply did not agree because of a combination of her deeply suspicious and distrusting mind and her unshakeable belief that everything she says is right. The Claimant is clearly someone who is inexperienced in the nuts and bolts of the Respondent's system. She was, after all, new to it. **Mr Tod**, on the other hand, was a super-user of the system. She had never met him before and no reason to believe that he would give her anything other than a genuine account of what he had found. There was no suggestion or evidence that he had any cause or reason to give anything other than a genuine account. Therefore, when the Claimant said things such as he has not been transparent, that he was wrong because the information she entered was never required to be transferred in the first place, that someone had accessed her account without authority and changed her details and the matter should be escalated to find out who removed her data and that she needs to know who, then **Mr Tod** is likely to see this as abrupt, rude and unprofessional. We would add, that we cannot contemplate or understand why anyone would want to access the Claimant's personal information and deliberately remove or change her date of birth or sex, as the Claimant maintained had happened.
63. **Miss Philipson**, as the Claimant's line manager was, in our assessment of the facts, entitled to raise the tone of the correspondence with the Claimant and she did so. We have seen and we find that she did so in a measured way. She said she would expect the Claimant to apologise for the tone and the Claimant, at the time at least, agreed to do so. She later changed her mind on this, however, once she read back through the email exchange. **Miss Philipson** even went as far as to explain that sometimes people can come across differently in writing than on paper. That is certainly our experience. Miss Philipson was making the point that she was not suggesting the Claimant was a rude or abrupt person. For the purposes of these proceedings, the point is that this was, we find, a perfectly normal (i.e. understandable) supervisor/employee discussion in the circumstances. The matter was never raised or mentioned again.
64. The Claimant emailed **Miss Philipson** on **19 December 2022** at 9.31pm [page 147]. She said that having reviewed the email she did not see anything rude or abrupt about the content or its tone. She said it was no light matter as the account should be secure and not for others to access at will. She said she was still unhappy with the way the matter had been dealt with, that she was clear that she entered the information on the account and that it remained there for some time. She said she did not understand why the data should be taken out without her permission or consent.



65. We note that the Claimant makes no reference in that email to **Miss Philipson** having said to her that very day that she should be careful or nice to **Alex Tod** if she wants to get her salary. Had **Miss Philipson** said that, we are of no doubt that the Claimant would have referred to the comment in that email of **19 December 2022**.

66. The Claimant's probation was extended three times in all:

- 66.1. The first was in **December 2022**,
- 66.2. The second was in **April 2023**, when it was extended to **31 May 2023** [page 189]
- 66.3. The third was on **27 June 2023**, when it was extended to **04 August 2023** [page 199].

67. The second and third extensions were not in accordance with and were in breach of the Respondent's policy, which allowed for one extension of probation only. Further, the Claimant did not receive any letter in **December 2022** at the time of the first probation extension. Rather, the decision was communicated to her verbally by **Miss Philipson** at the meeting on **19 December 2022**.

**Annual appraisal: January 2023**

68. **Miss Philipson** and **Mrs St Joseph** met on **23 January 2023** to conduct an appraisal. **Miss Philipson** was positive about the Claimant in that meeting but she also made clear that the main issue was being productive and the need to log cases on to the casebook system in a timely manner. The Claimant had been moved back to the Davidson building from that date. It was thought and hoped that this would mean more support for the Claimant and would provide her with an opportunity to catch up on the Chopwell backlog.

69. **Miss Philipson** continued to monitor the Claimant's productivity. She noted some improvement in **February 2023**. However, the Claimant was still behind with getting her cases on to casebook. She met with the Claimant on **20 February 2023** [page 260]. **Miss Philipson** urged the Claimant to focus on this and if required to link in with **Mr Keilty**. The Claimant told **Miss Philipson** that she had been enjoying working back in the Davidson building. She had been removed from the Davison emergency rota for two weeks to assist her to catch up.

70. Despite this, things did not improve. In fact, the Claimant's productivity dipped in **March 2023** [page 324]. **Miss Philipson** reduced the slots the Claimant was required to be on the Davison emergency rota again. On **03 April 2023**, she met with the Claimant to review her probation [pages 176-186 and page 262]. She explained to the Claimant that her probation was being extended to **31 May 2023**. They discussed the reasons for this. The Claimant said that there was too much work to do to enable her to write cases in the time required. **Miss Philipson** made it clear what was expected of the Claimant in terms of recording of 330 minutes / 5.5 hours on casebook per day [page 177]. She was to achieve an average quality score of 73%. She was to complete 2 evidence forms on casebook per month. **Miss Philipson** completed the grey boxes (the sections with employee comments at the meeting).

71. The probation document is a 'dynamic' document in the sense that information that is previously added remains but new information is updated onto the form. Therefore, much of the information on **pages 176 to 186** already appeared on the **October 2022** document [pages 151-160]. The new information entered on **03 April 2022** was as follows:

*"Updated on 03/04/23 – I have asked Marie-Antoinette to focus on ensuring her work and notes are up to date. We have had issues with the write ups not going on to casebook within the 3 working day requirement and sometimes not going onto casebook at all. In order to assist Marie-Antoinette to catch up, I have reduced her time on the emergency rota at the Davidson until the end of April. This should be sufficient time to get caught up and stay on top of the work she is doing. Following this we will then reintroduce extra sessions on the rota and monitor how she is managing those. This will take us up until the end of May"* [page 179]

*"She needs to complete the outstanding tasks – write ups and follow up work for clients. Marie-Antoinette also needs to manage her workload moving forward. I have encouraged her to see one client and then write it up before moving onto the next one. Obviously this might not always be possible, such as when she is covering emergencies. Outside of this, she should aim to do each client one by one."* [page 181]

*"Marie-Antoinette needs to keep up to date with her write ups as this can negatively impact quality and client journey, so needs to be corrected. I have asked Marie-Antoinette to work with the advice coach to find a way to better manage this."* [page 182]

*"Overall Marie-Antoinette has made a significant amount of progress, compared to where she was just a month or so ago. However, there are still some major aspects that require addressing. Marie-Antoinette needs to work on keeping up to date with her write ups and ensuring they get onto casebook with the required time. I have asked her to see a client and write it up, before moving onto the next one. This will also assist her with her productivity"* [page 183]

*"The probation period is being extended until the 31/05/23. I will ensure that I have regular meetings with Marie-Antoinette to monitor her progress and support her to put right the outstanding actions in order to pass her probation. The reason are as stated above. We need to see a period of Marie-Antoinette completing write ups in a timely manner before being able to pass her probation. This is to demonstrate that she can manage her work load effectively. There should be no outstanding write ups to be placed on casebook, outside the 3 working days that CAG allows in special circumstances."* [page 184]

*" objective to e achieved: no outstanding write ups past 3 working days; support to be provided: working with the advice coach; date by when objective is to be achieved: 31/05/2023; maintain quality and consistency: support to be provided: continue working*

*to current quality standard and work with advice coach; date by when objective is to be achieved: 31/05/2023.” [page 185]*

72. That document, as we have already articulated, was available on sharepoint for the Claimant to access. Because the Claimant had not been accessing the probation document on the system and not making entries herself, **Miss Philipson** sent it to her by email on **18 April 2023** [page 187]. She said *‘any questions, please do not hesitate to ask’*. **Miss Philipson** had told the Claimant at the time that she would email it to her [page 262]. She thought that the Claimant would be worried having the matter hanging over her and said as much, in the hope that the Claimant would focus on clearing the backlog. However, the Claimant expressed no concern or worry to **Miss Philipson** at that meeting, and said she was just taking matters one day at a time.
73. The Claimant did not review the document until on **27 May 2023**, just under six weeks after she received it [page 187]. She says that this was due to the workload but we do not accept this. It is more likely than not that it was due to a lack of urgency on her part, and we so find.
74. The Claimant took issue with some of the entries as can be seen from **page 187**. Consequently, **Miss Philipson** and **Nick Dixon**, Client Services Supervisor met with the Claimant on **07 June 2023** to discuss her email. Notes of the meeting were taken by **Mr Dixon** and are at **pages 192-198**. A copy of the notes were sent to the Claimant that day [page 191].
75. **Miss Philipson** acknowledged her error regarding the ‘ticks’ or ‘Xs’ on **page 180**. This is what the Claimant referred to as ‘the middle part’ in the second paragraph on **page 188**. She had not ticked the correct boxes by oversight. She pointed out that her comments in those areas were very positive. It was, we find, clearly an oversight and nothing more.
76. **Miss Philipson** also acknowledged that the reference to the Claimant having Covid could be changed. We would observe that this reference to Covid had been on the form since **October 2022** and by this time we were now 7 months down the road. If **Miss Philipson** mis-recorded what the Claimant said back then, it is of no consequence, we find. The Claimant had absented herself from work at the time. She did this because she said she had tested negative for Covid but that she did not want to take the risk that she might still infect someone at work. She told the tribunal in evidence that this was because a member of her family had contracted Covid. Therefore, as a precaution she took 3 days off work. That sounds very much to us like a period of sick leave or if not, it is as close to a self-certified period of sick leave as one can get without it being such. If it was mis-recorded on the form, it was without consequence. The Respondent had no issue whatsoever with the Claimant’s attendance or her record of sick leave. Given the Claimant’s general unreliability as a witness, we are not convinced that this was in fact a mis-recording by **Miss Philipson**. Moreover, we note that in her email, on **page 187**, the Claimant – on referring to the ‘*middle part of this document*’ being prepared ‘*with prejudice*’ says that ‘*this was almost the same time I challenged people HR team on why my personal data in the people HR team account was altered without my consent*’. If, as the Claimant maintained in evidence, she had never

seen any probation document before **27 May 2023** (when she reviewed the **03 April** document) we do not understand how she would have known that the 'xs' (i.e. 'the middle part') had been entered by **Miss Philipson** at the time she challenged people HR team. She would only know that if she had seen the document before **May 2023**. We note our finding that she first referred to her data as having been altered in **October 2022 [page 163]**. This is further confirmation to us that the Claimant had always been able to access the probation document and that she had done so but that she made no entries on them. Further, on **page 193**, when told that the probation document was originally shared with her back in **June 2022**, the Claimant did not dispute this in that meeting. Rather she said she was not given direction to complete it. We do not accept the Claimant's evidence on this. She was never told she did not have to complete the form. The opposite is the case and she chose not to. Despite the contemporaneous documents showing that she had been given access to the documents, she persisted in evidence that she had never been given access and was never told to complete them. Her evidence on this, as with many other aspects, lacks credibility and reliability.

77. In light of the issues raised by **Mrs St Joseph**, **Miss Philipson** agreed with **Mr Laing** that he would manager her probation from there. She ceased to have line management responsibility for the Claimant.
78. On **27 June 2023**, **Mr Laing** wrote to the Claimant confirming that he was presently unable to sign off her probation because she was not getting her case notes on to casebook within 3 working days **[page 199]**. **Mr Laing** described the 3 working day requirement as 'non-negotiable' which he said she acknowledged. He referred to the positive aspects of her work but explained that he was extending her probation to **04 August 2023** to enable her to demonstrate that she was able to get case notes on within the 3 working days.

### **Grievance and Claimant's absence from work**

79. On **17 July 2023**, the Claimant raised a complaint which was treated as a grievance **[page 207-209]**. At the end of the email, the Claimant added:

*"What is going on now is more of a fault finding mission, detracting from the main issue and creating an unhealthy work atmosphere and environment. For these reasons I am reiterating that I am exercising my statutory rights and choosing not to be subjected to further unfair treatment and taking myself out of the situation until the responsible member of staff has answered the key questions leading to all of these series of scrutiny."*

80. This was sent to **Ms Wood-Archer** and **Mr Laing** with the content of the email being addressed to **Mr Laing**, not **Ms Wood-Archer**. **Ms Wood-Archer** forwarded this to **Claire Hall** in HR to deal with formally **[page 209(a)]**. In doing so, **Ms Wood-Archer** observed that **Mr Laing** should continue to support the Claimant to successfully achieve her probation objectives. The Claimant then absented herself from work. She was not sick. She provided no fit-note and remained absent without leave until **09 November 2023**, a period of approximately 16 weeks. During this period she was not paid her salary.

81. **Neil Uren**, Head of Digital, was appointed to investigate the grievance. He read the grievance and did some preparatory preparation [page 230(a) to (c)]. He met with the Claimant on **02 August 2023**. In cross-examination, **Mrs St Joseph** asked him whether the invite letter of **31 July 2023** [on page 216] had been attached to the email on page 215. **Mr Uren** said that to the best of his knowledge it had. The Claimant then put it to him that the letter on page 216 was not in fact attached to the email but that a different version of the document had been attached. When asked why this had not been raised before, the Claimant said that she had only realised it when she was giving her evidence the day before. If that was the case, and we very much doubt it, she still said nothing about it during her own evidence. The Claimant had the document she says was attached to page 215 with her. Therefore, the Tribunal took copies and added this to the bundle at page 216A (see paragraph 3.2 above). That document is a template document with the name **Alison Dunn** at the bottom.
82. **Mr Uren** was unable to say from memory precisely which document was attached to the email but he believed it to be page 216. In any event, the Tribunal could not understand the significance of this. Any reasonable employee who had received an email with a 'template document' attached (such as that at page 216A) would have asked the sender what it was. The document on page 216 inviting the Claimant to the meeting gave the date, time and venue of the meeting. The Claimant attended on that date, at that time and at that venue. Therefore, she was either sent the version on page 216 or she queried the document on page 216A. As she raised the matter after completion of her evidence we do not know whether the Claimant received page 216 or 216A. Whichever it was, the message got through to her and she attended as per the invite. Either way, we could see no issue worthy of any complaint. No reasonable person would make anything of this, yet the Claimant made much of it. **Mrs St Joseph**, in paragraph 43 of her written submissions to the tribunal said that we see how **Mr Uren** changed the document on page 216A for the purpose of this hearing. She asserts that the document at page 216 and other documents were forged for the purpose of this hearing. Sadly, we find that **Mrs St Joseph's** thinking in many respects – not just this – had the appearance of being somewhat delusional.
83. The Claimant was provided with a copy of the notes of the meeting of **02 August 2023** [pages 221 to 224]. She then edited the notes by adding comments to them (in green highlights) [pages 225 to 230].
84. When **Mr Uren** met with the Claimant he was concerned that she was not at work and not being paid. He asked if she was unwell. She explained that she was not unwell, that she was not at work because she was not happy with the atmosphere and that it needed to be cleared. She said she was fine not being paid and did not want to come into work until the matter was resolved. **Mr Uren** mentioned the possibility of the Claimant doing alternative work or working from home or in a different team temporarily. We find that the Claimant was not prepared to do anything other than stay away from work. She had told herself that she had a statutory right to do so and that was what she was going to do. She had an utterly

confident and unshakeable belief that she had such a right and nothing would shift her from it.

85. **Mr Uren** then met with **Miss Philipson** on **02 August 2023**. Notes of that meeting were taken [pages 230(a) – 230(d)]. He met with **Mr Laing** on **16 August 2023** [pages 230(m) to 230(u)]. He obtained a statement from Alex Tod. He reviewed the audit records for People HR. He wished to see where any changes had been made. He observed **Mr Tod** go through the steps to move information from Microsoft Forms to People HR. He checked through the email exchanges with Susan Stewart. He has set out in his witness statement what he did and we accept his evidence as honest and truthful, as we did in the case of **Miss Philipson** and **Ms Wood-Archer**. He reviewed the 1-2-1 and probation documents. He reviewed the documents of those others who had been on probation. He reviewed the policies of the organisation. He was then ready to come to a decision on the Claimant's grievance.
86. On **14 September 2023**, he emailed his outcome to **Mrs St Joseph** [pages 232 – 235]. He partially upheld aspects of the grievance as set out in his letter. **Mr Uren** set out his conclusions in paragraph 39 of his witness statement. As regards the extension of the Claimant's probation he concluded that the probation policy allows for only one extension. He concluded that this was down to a poor understanding of the managers **Miss Philipson** and **Mr Laing**, that it was a performance issue rather than any malicious intent. He felt that the managers were trying to be too nice as they could have ended the Claimant's probation earlier but they did not. He found nothing to suggest that the extensions of probation were related to the Claimant's complaint about the information on People HR.
87. What matters in any discrimination claim is not the findings of a person who investigated a complaint (such as **Mr Uren**), but our findings and our conclusions. We set out our findings in relation to **Mr Uren's** investigation because we are quite satisfied that he was careful and thorough in what he did. As a tribunal, we are satisfied and so find that all three extensions of the Claimant's probation had nothing whatsoever to do with the fact that the Claimant had raised a complaint about her People HR data. The Claimant asserted this on multiple occasions during her employment and also in the course of these proceedings. More pertinently, we are satisfied and so find that the reason and the only reason the Claimant's probation was extended was because she was not hitting the required numbers on casebook. Although we have not heard from **Mr Laing**, **Miss Philipson** gave clear, truthful, cogent and supported evidence regarding the reasons for the probation extensions which we accept.
88. **Mr Uren** was of the view that the Claimant's productivity be managed through an improvement plan with **Nick Dixon**, her new line manager [page 248]. He made recommendations about wider policy matters and with regards to the probation process which were implemented by **Ms Wood-Archer**. **Mr Dixon** was to and did take up the matter of an improvement plan with the Claimant.
89. The Claimant appealed **Mr Uren's** outcome. In her appeal document [pages 241-246] she persisted in the assertion that her data was accessed without consent, tampered with and

removed. She persisted in the assertion that her probation was extended because she had complained about the data removal. The Claimant confirmed that she wished the grievance appeal to be dealt with without a hearing. **Darren Mayne**, Commercial Director, therefore reviewed the documents and made a decision on the appeal, which he conveyed to the Claimant on **14 November 2023** [page 254- 256]. The appeal was partially upheld in the limited sense that he considered there to have been some miscommunication around the onboarding data and upheld the appeal regarding the handling of the probation process.

90. In the meantime, the Claimant returned to work on **09 November 2023**. On **15 November 2023**, **Ms Wood-Archer**, Service Director, wrote to the Claimant to confirm that she had successfully completed her probation period. This was in keeping with **Mr Uren's** conclusions. Following the appeal outcome, the approach taken was to confirm the probation and to manage any productivity or performance issues, if necessary, through performance management plans.
91. Because the Claimant had absented herself from work for such a long period of time, she was provided with support from an advice coach on return. That support was managed and provided by **Nick Dixon** with input from **Stuart Keilty**. **Mr Dixon** met with the Claimant to discuss support that would be provided. He wrote to her on **09 November 2023** [page 248-249] and **24 November 2023** [page 249-250] confirming the arrangements that he was putting in place.
92. On **02 February 2024**, the Claimant emailed **Claire Hall**, Head of HR. She said she was extremely disappointed that she had not been put forward for the generalist certificate whilst others have. She said she strongly believes that this is institutional racism which flows from the top. She wanted to know why she was being excluded, why this was not addressed when her original complaint of **17 July 2023** was made. She said there were still uncleared issues with her personal data being tampered with – despite having had a grievance hearing and appeal [page 302]. The Claimant said that she was exercising her statutory right not to continue working in this way until these questions had been answered and resolved [page 303]. Once again, the Claimant absented herself from work. She remained absent from then and has never returned. She maintains that in **December 2024** she discovered that the Respondent had dismissed her. She made this discovery, she says, when she saw on her HMRC Gateway account an end date of **25 August 2024**. As far as she is concerned, as she explained to the tribunal, her employment has been terminated from then. She told the tribunal that she made an application to amend her ET1 but this was refused, therefore, she has presented a second claim for wrongful dismissal. She explained that she understood the difference between unfair dismissal and wrongful dismissal and gave the tribunal an example. She says she has not claimed unfair dismissal in the second set of proceedings, only wrongful dismissal. The Respondent does not accept that it terminated the Claimant's employment. The new claim was submitted on **21 March 2025** so at the time of this hearing, it is unlikely that it had been processed by the tribunal. We do not have to decide on whether the Claimant's employment was terminated or whether it was wrongful or not. The fact is, however, that from **02 February 2024** the Claimant was absent without leave and the Respondent then ceased paying her salary.

93. The Claimant produced some payslips in the supplementary bundle for reasons which were not clear to the Tribunal. She points to some payment being received in **December 2024** [page **SB47**]. The Claimant did not know what the payment was for. **Ms Wood-Archer** did not know either but, in her cross-examination and when asked by the Tribunal, she said she could guess. The Tribunal judge asked whether this was an educated guess. She said that it was. Her educated guess was that the payment was to do with holiday pay. As the Claimant had been off so long and as she was accruing holiday pay, **Ms Wood-Archer's** guess was that someone, somewhere in payroll decided that the Claimant should be paid this. As we have stated, we could not see what this payment had to do with any of the issues. However, **Mrs St Joseph** sought to use it to undermine the credibility of **Ms Wood-Archer**. In paragraphs 14 to 18 of her written submissions she submits that **Ms Wood-Archer's** evidence shows her not to be credible, that it shows her to be dishonest and that her carelessness and complacency is a sign of her acceptance of racist attitudes towards the Claimant. **Ms Wood-Archer** did not say anything about 'performance related pay', yet the Claimant, in paragraph 16 of her submissions says that she did. **Ms Ismail**, in her closing submissions, points to this (and other aspects of the Claimant's evidence) as demonstrating her unreliability as a witness more widely. Had it just been that one thing we would disagree that this demonstrated unreliability. However, taken alongside the Claimant's evidence and allegations as a whole, we agree that it is yet another indicator of the Claimant's overall lack of credibility and reliability. It sits alongside the suggestion to **Mr Uren**, made for the very first time, that the Respondent employed 'ghost workers' for the purposes of unlawfully siphoning funds from funders; and the suggestion that the Respondent was engaged in other unspecified financial malpractice; and the suggestion that because of this **Mr Uren** 'side-stepped' interviewing **Andrea White**, and the suggestion that the Respondent had forged documents for the purposes of these proceedings. These were all reckless and unfounded allegations, wholly without merit and made frivolously.
94. Returning to the sequence of events the Claimant's email of **02 February 2024** was passed to **Ms Wood-Archer** who tried to fix up a meeting with the Claimant sooner rather than later. The Claimant suggested **14 February 2024**. **Ms Wood-Archer** preferred an earlier date and suggested alternatives but the Claimant said she needed time to have a constructive discussion but said she was still available on **14 February 2024** at 2pm.
95. The two of them discussed the email on **14 February 2024** at 3.30pm. **Ms Wood-Archer** explained how the generalist certificate is achieved. The Claimant said she believed she had achieved the standard. We accept the account given by **Ms Wood-Archer** in paragraph 20 of her witness statement. **Ms Wood-Archer** then reviewed the Claimant's casebook notes. She spoke to **Nick Dickson**, **Sam Keilty** and **Sam Laing**. From what she saw, **Ms Wood-Archer** considered the Claimant's work to be of a good standard. However, she noted that the work had been first checked by the advice coach who often asked for corrective actions before the work was loaded on to the system. The next step was for management to be satisfied that the Claimant could achieve that level of good work independently.



96. On **06 March 2024**, she emailed the Claimant saying, among other things:

*“ .... The work you have completed so far while of a good quality has been with 100% support, checking and feedback from the Advice Coach. So next steps is for you to move away from that one to one support and checking so that we can be sure of the quality of your own work. Nick will discuss with you the detail of how this work in practice.*

*We value your work with clients and your contribution to the team and we will work with you to ensure you achieve the standard needed to gain the generalist certificate and progress in your career here t Citizens Advice Gateshead. If you would like to talk to me then let me know your availability. Otherwise I expect you to get in touch with Nick and arrange with him your return to work.” [page 313]*

97. As already stated, the Claimant did not return to work. Rather than do so, she chose to remain absent without pay. She considered the way she was being treated to be racist [page 311].

98. In an email dated **07 March 2024** [page 310] **Ms Wood-Archer** said that during case reviews it was noted that the Claimant had been calling clients and adding case notes to casebook, whilst absent from work, without checking with session support or another supervisor. She asked the Claimant to stop this immediately. She insisted that she follow the proper process as their insurance is at risk. The Claimant has taken this as **Ms Wood-Archer** accusing her of giving incompetent advice. However, she was not saying that at all. She was merely pointing out that the organisation must provide advice according to its processes and that if an adviser steps outside those processes, this poses an insurance risk to the organisation. The Respondent's advice is covered by professional indemnity insurance. A condition of the insurance is that they have a robust checking and supervision framework in place. It was no more than that and it is something that we would have expected any reasonable worker in those circumstances to have simply acknowledged.

99. On **07 March 2024**, the Claimant requested that all communications since **06 February 2024** and all future communications are passed through ACAS as she has no confidence that they will get anywhere or resolve this matter with the way its being managed and addressed” [page 309]

### Relevant law

100. Section 39(2) Equality Act 2010 provides that an employer ('A') must not discriminate against an employee of A's ('B') by, among other things, dismissing B or subjecting B to any detriment. Section 39(4) EqA 2010 provides that an employer 'A' must not victimise an employee of A's (B) by dismissing B or subjecting B to any other detriment. Section 40 contains a similar provision for harassment. When considering whether an employee has been subjected to a 'detriment' Tribunals should take their steer from the judgement of the House of Lords in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003]

I.C.R. 337, where it was held that a detriment exists *'if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment'*.

101. These concepts of discrimination and victimisation are then defined in other provisions, for example section 13 (direct discrimination), section 26 (harassment) and section 27 (victimisation).

### **Direct discrimination**

102. Section 13 provides that:

*(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.*

103. Direct discrimination requires there to be less favourable treatment of a claimant than a comparator (real or hypothetical) because of a protected characteristic. It is necessary to explore the mental processes, conscious or unconscious of the alleged discriminator to discover the facts that operated on his or her mind: **Amnesty International v Ahmed** [2009] I.C.R. 1450, EAT. However, the protected characteristic need not be the only reason or even the main reason for the treatment for it to be said to be 'on grounds of' or 'because of'. It is enough that the protected characteristic is an effective cause. The protected characteristic must be a significant influence of the treatment. Thus, the reason why a claimant was treated as he or she was is a relevant circumstance. That reason must also be included as a relevant circumstance in the case of a hypothetical comparator.

104. Section 23 of the Equality Act provides that on a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case. The comparator must be in the same position in all material respects as the claimant save only that he or she does not share the same protected characteristic. If the circumstances of each are materially different, then the comparator is not an 'appropriate' comparator (although what happened to such a comparator may still have evidential value – especially when considering how a hypothetical comparator would have been treated)..Equally important, it is important that material circumstances are not left out of account when determining whether an actual or hypothetical comparator was or would have been treated more favourably.

### **Harassment related to a protected characteristic**

105. Section 26 provides that:

- (1) A person (A) harasses another (B) if--
  - (a) A engages in unwanted conduct related to a relevant protected characteristic, and
  - (b) the conduct has the purpose or effect of--

- (i) violating B's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

- (a) the perception of B;
- (b) the other circumstances of the case;
- (c) whether it is reasonable for the conduct to have that effect.

106. Unwanted conduct is just that: conduct which is not wanted or 'welcomed' or 'invited' by the complainant: see ECHR Code of Practice on Employment, para 7.8. It is not enough that the alleged perpetrator has acted or failed to act in the way complained of. There must be something in the conduct of the perpetrator that is related to the protected characteristic. This is wider than the phrase 'because of' used elsewhere in the legislation and requires a broader inquiry, but the necessary relationship between the conduct complained of and the protected characteristic is not established simply by the fact that the Claimant is black and that the conduct has the proscribed effect. The intention of those engaged in the unwanted conduct is not a determinative factor although it may be part of the overall objective assessment which a tribunal must undertake.

### **Victimisation**

107. Section 27 provides:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because:
  - (a) B does a protected act, or
  - (b) A believes that B has done, or may do, a protected act

121In complaints of direct discrimination, the less favourable treatment must be 'because' of the protected characteristic. In complaints of victimisation, the detriment must be because of the protected act.

### **Burden of proof**

108. Discrimination can be subtle. The law recognizes that there is rarely evidence of discrimination. That much depends on inferences to be drawn from the facts. People usually do not admit to discrimination, not even to themselves. The law tries to assist in section 136 Equality Act 2010, which provides that:

- (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

109. Section 136 EqA, otherwise known as the burden of proof provision, lays down a two-stage process for determining whether the burden shifts to the employer. However, it is not obligatory for Employment Tribunals to apply that process. Whether there is a need to resort to the burden of proof provision will vary in every given case. Where there is room for doubt as to the facts necessary to establish discrimination, the burden of proof provision will have a role to play. However, where the tribunal is in a position to make positive findings on the evidence one way or the other, there is little to be gained by otherwise reverting to the provision: **Hewage v Grampian Health Board** [2012] I.C.R. 1054.

110. In cases where the tribunal is not in a position to make positive findings, s136(2) means that if there are facts from which the tribunal could properly conclude, in the absence of any other explanation, that A had – for example - harassed B, it must so conclude unless A satisfies it otherwise. In considering whether it could properly so conclude, the tribunal must consider all the evidence, not just that adduced by the Claimant but also that of the Respondent. That is the first stage, which is often referred to as the ‘prima facie’ case. The second stage is only reached if there is a prima facie case. At this stage, it is for A to show that he did not breach the statutory provision in question. Therefore, the Tribunal must carefully consider A’s explanation for the conduct or treatment in question: **Madarassy v Nomura International plc** [2007] I.C.R. 867, CA; **Igen Ltd v Wong** [2005] I.C.R. 931, CA

## **Submissions**

111. Both parties produced written submissions. **Ms Ismail** spoke very briefly, picking up on some points in **Mrs St Joseph’s** submissions and answering some questions from the Tribunal. **Mrs St Joseph** did not feel there was any need to say anything more than what she had written. For the sake of brevity we do not intend to set them out now. We have read them and considered them in the course of our deliberations.

## **Discussion and conclusions**

### **The Harassment related to race claim**

112. The alleged acts of direct discrimination are set out in paragraphs 3.1 to 3.10 of the list of issues. Those same acts are said to be acts of harassment related to race. The Claimant’s case on harassment and on direct discrimination was based on the fact that she is black. The Equality Act provides that if something is an act of harassment in contravention of section 26, it cannot also be an act of direct discrimination. It will be one or the other. Therefore, we considered the complaint of harassment related to race first. If we were to find that any of the acts amounted to harassment there would be no need to consider if they amounted to direct discrimination.

Para 3.1: Did Alex Tod, Kayleigh Phillipson, Judith Wood-Archer, Sam Laing and Darren Mayne ignore and choose not to take reasonable steps to address the Claimant's complaints of: **07 December 2022, 27 May 2023, 17 July 2023, 18 September 2023 and 02 February 2024?**

113. The Claimant needs to establish the factual basis that some or all of these individuals ignored and/or chose not to take (reasonable) steps to address her complaints.
114. She has not done so. Looking back at our findings, **Mr Tod** replied to her concerns about the data. He did so reasonably and clearly. We disagree with the conclusions of those who investigated the Claimant's grievance on this point (**Mr Uren** and **Mr Mayne**). In our judgement there was no miscommunication over the matter. **Mr Tod** gave the Claimant a considered and understandable response. The reality is that the Claimant was never going to accept anything he or anyone else said on the subject because of her unshakeable confidence in her version of events: i.e. that she had entered data which was subsequently removed by someone. **Mr Tod** certainly did not ignore the Claimant's concern on this and neither did **Miss Philipson**. It was not her role to look into it. Neither has the Claimant established that any of the other individuals ignored or chose not to take reasonable steps to address the other complaints. Indeed, the evidence – and moreover, our factual findings - reveals the opposite to be the case. The Respondent treated the Claimant with courtesy and respect. It listened to what she had to say. It went away and responded to what she had to say. Short of agreeing that her data had been tampered with and that this was a result of institutional racism, in our judgement, nothing it said or could have said would have been enough to satisfy the Claimant on this point.

Para 3.2: Did **Kayleigh Phillipson** fail and refuse to record information on what stage the Claimant was at or what she was working toward following the informal progress review meetings on **19 December 2022**, and the meetings in **March, April and May 2023?**

115. The Claimant has failed to prove this assertion. Again, the evidence and our findings show the opposite to be the case. **Miss Philipson** did her best to support the Claimant and to explain to her what she needed to do. **Miss Philipson** had her shortcomings, which we have set out. In particular, she did not apply the probation policy which provides for one extension of probation only. However, from our findings, it is clear that she was going to pass the Claimant for probation. It was only on discussion with **Mr Laing**, who had monitored the productivity of the Claimant and others on dashboard, that the decision was made to extend probation, not by her, but by **Mr Laing**. **Miss Philipson** had been and remained positive about the Claimant where it was warranted whilst noting where she needed to improve. She was never critical or negative of the Claimant in any respect, other than in discussing the tone of the email exchange with **Mr Tod**. Even here, she was not unduly critical. She expressed her view as to the tone and what she would expect the Claimant to do. From the point at which she first told the Claimant her probation was extended, she ensured the Claimant knew what was expected of her and gave her appropriate support. She recorded her meetings with the Claimant, who could have accessed the notes had she

wished to do so. We have roundly rejected the Claimant's baseless assertions that the documents on which **Miss Philipson** made her records were forged by her.

Para 3.3: Did **Kayleigh Phillipson** fail to assess the work the Claimant had done with clients for the purposes of putting the Claimant forward to a national assessor for her to be assessed and graded as a generalist, level 1, 2 or 3?

116. The Claimant has failed to prove this assertion. This assertion by the Claimant is based on a misunderstanding on her part of the process of obtaining a generalist certificate. It was not **Miss Philipson's** role to assess the work for the purposes of putting her forward to the national assessor. The timing of an assessment by the assessor and the cases to be selected was something to be discussed between the line manager and the employee. Clearly, the Claimant would need to be in a position whereby cases selected by her would be passed by the assessor, and one of the criteria for certification was that the cases be written up within 3 working days. The Claimant was not achieving this. **Miss Philipson** acknowledged that the hub could be a busy place and took steps to reduce the Claimant's exposure to that busy environment as far as she reasonably could. The fundamental issue was the pace of work by the Claimant. She was, in **Miss Philipson's** belief, at times spending too long with clients, sometimes doing things for them that was unnecessary (as opposed to empowering them to do things for themselves) and more particularly taking too long on getting case notes on to the system. Miss Philipson did what she reasonably could to assist the Claimant go forward for assessment but the Claimant, in our judgement, has used the 'busy-ness' of the environment as an excuse for not meeting the expectations of the Respondent. Those expectations are that, even in a busy environment, case-notes must be written up within 3 working days. It is not for the Claimant to dictate the Respondent's policy but to work within it. Her view was that she was doing the best that she could and she could do no more as the environment was too busy. Other social welfare advisers worked in the same busy environment, yet she was the only one who was taking too long to write up and the only one to build up such a backlog. We conclude that the Claimant was simply not ready to be assessed for the generalist certificate. It was not a case of Ms Philipson failing to assess her work for those purposes – and that was not her responsibility. The Claimant never got around to identifying three cases for assessment.

Para 3.4: Did **Kayleigh Phillipson** fail to put the Claimant forward for generalist certificate consideration, something the Claimant said she should have done after Kayleigh Phillipson told the Claimant before **December 2022** that she was going to pass her probation?

117. This is much the same as issue 3.3. We repeat what we have already said above. The Claimant has failed to establish the necessary facts.

Para 3.5: Did **Nick Dixon** or some other manager of the Respondent instructing **Nick Dixon** make the Claimant start the training process all over again?

118. The same applies here. The Claimant was not made to 'start the training process all over again'. It was not clear what the Claimant even meant by this. She certainly has not established any such factual basis for this assertion. From our findings, it can be seen that what **Mr Dixon** did was to offer her and provide her with support for the purposes of enabling her to improve and progress in a career with Citizens Advice Gateshead. There was no evidence of any other manager instructing **Mr Dixon** to make her start the training process all over. And it simply did not happen that the Claimant started the process all over again.

Para 3.6: Did **Nick Dixon** or some other manager instructing **Nick Dixon** put the Claimant under unnecessary supervision on **09 November 2023**?

119. When the tribunal asked the Claimant what she meant by 'unnecessary supervision', she said that this was a reference to **Mr Keilty**, the advice coach, checking her work. However, we are satisfied that the support that **Mr Dixon** arranged, which included arranging for **Mr Keilty** to check, support and coach the Claimant was reasonable and necessary. To the extent that the Claimant maintains this was unnecessary supervision, we wholly disagree. On the evidence, which unequivocally shows that she was substantially behind with her write ups throughout the whole of her employment, that input was both appropriate and necessary. Again, the Claimant has failed to establish the factual assertion.

Para 3.7: Did **Judith Wood-Archer** deliberately and actively refuse to address and deal with the negligence of **Kayleigh Phillipson** after the Claimant's complaint and choose to blame other managers and ignore what needs to be done to put things right?

120. The Claimant has, again, failed to make good this assertion. By passing the Claimant's complaint to the Head of HR and asking it to be formally investigated, **Ms Wood-Archer** acted professionally and appropriately (see paragraph 80 of our findings). She did not deliberately and/or actively refuse to address what the Claimant refers to the negligence of **Miss Philipson**. She made sure that the Claimant's complaint was investigated. **Ms Wood-Archer** did not blame other managers and ignore what needed to be done to put things right. It was unclear what the Claimant meant by blaming other managers. As to ignoring what needed to be done to put things right, the only thing that would have satisfied the Claimant would be an acceptance that her data had been tampered with, that her probation had been extended because she complained of this, and latterly that all of this was to do with institutional racism.

Para 3.8: Did **Judith Wood-Archer** make the Claimant start the process of achieving a generalist certificate again when the Claimant had already completed what she needed to do?

121. Again, the Claimant has failed to make good this assertion. As we have found, there was no process of starting again. The Claimant had not completed what she needed to do. She had not identified 3 cases for the purposes of sending them to the assessor. The Claimant was not up to date with her writing up.

Para 3.9: Did **Kayleigh Phillipson**, on **19 December 2022**, tell the Claimant in a 1-2-1 meeting that she had been rude to **Alex Tod** ('AT') of HR, that she needed to write an apology letter to AT and that she should be careful and be nice to AT if she wants to get her salary?

122. We have found that **Miss Philipson** said to the Claimant that she felt the tone of the email exchange to be abrupt and at times rude and that after a discussion she would expect the Claimant to expect an apology. **Miss Philipson** did not say anything about being nice if the Claimant wanted to get her salary. This suggestion that the Claimant apologise was made after a reasonable and appropriate discussion about the Claimant's written tone. Indeed, the Claimant agreed at the time to apologise. She later changed her mind, however, on reading back over the emails. She did not apologise and the matter was never raised again. In context there is nothing about what **Miss Philipson** said that, in our judgement, amounts to unwanted conduct. It was a normal and understandable discussion between line manager and employee. In any event, even if it was 'unwanted' conduct to say that she would expect an apology, this conduct was wholly unrelated to race. It had no connection whatsoever to the Claimant's colour or racial background. Further, **Miss Philipson's** purpose in suggesting an apology was to ensure harmonious working relationships. It was not to violate the Claimant's dignity or to create the proscribed environment. We note that the Claimant said nothing about this in evidence or submissions. As to effect, (whilst the Claimant said nothing of the effect) it is in our judgement is unreasonable to regard this conduct as having the effect set out in section 26 Equality Act.

Para 3.10: Did **Kayleigh Phillipson**, or any other manager instructing **Kayleigh Phillipson**, extend the Claimant's probation in **December 2022** and again in **March, April** and in **May 2023**?

123. We have found that the Claimant's probation was extended three times (not four). **Mr Laing** was the person who decided this, and it was communicated and managed by **Miss Philipson**. The extension of probation we conclude amounts to unwanted conduct, in the sense that no employee would welcome not having their probation approved, and certainly not three times. The real question is does the unwanted conduct relate to the Claimant's race. Working on the basis that the burden of proof provisions apply here – in that the second and third extensions were outside the policy, we have nonetheless no doubt that the race or colour of the Claimant was a not factor in the decisions to extend her probation at any time. The Respondent has more than satisfied us on the evidence that it was wholly related to and because of her failure to comply with its requirements regarding case write ups. The Claimant's employment could validly have been terminated at the end of six months or nine months. That it was not is down to the fact that her managers were, in reality, supportive of the Claimant - what **Mr Uren** described as being, too nice. They wanted to give her a chance to improve, rather than terminate her contract, and they did so by extending probation and putting support in place to help her. Yes, they were in breach of the probation policy but the conduct was in no way related to or because of race or colour. Sadly, the Claimant is incapable of seeing this. Rather, she remains convinced – and no doubt always will remain convinced – that her probation was extended because she dared to raise a complaint about her data and because she is black. Following a careful



examination of the evidence, we are satisfied that this could not be further from the truth. The extension of the Claimant's probation was wholly unrelated to race or colour.

124. Because the Claimant has failed to establish the necessary facts – and because in any event, the Respondent satisfied us that the conduct complained of (including that under issue paragraph 3.10 was wholly unrelated to race or colour, the claims of harassment within the meaning of section 26 Equality Act fail and are dismissed.

**Direct discrimination**

125. Having dismissed the claims of harassment related to race, we then had to consider whether the same acts amounted to less favourable treatment on grounds of race. These complaints also fail for two essential reasons:

125.1. Save for the extension of probation point, the Claimant has failed to make good the acts which she says amounted to detriments. In all but that respect, she was not in fact subjected to the detriments she alleges. In any event, we were satisfied, on a careful analysis, that the Respondent's managers were not in any way motivated by race.

125.2. As regards the probation extension, we found that the motivation and decisions made had nothing whatsoever to do with the Claimant's race or colour. The decision to extend probation was entirely down to the Claimant's own failure to write up her cases on time despite being provided with appropriate support to enable her to do so.

126. In arriving at this conclusion, we considered the position of Hazel Featherstone. She was the comparator relied on by the Claimant in these proceedings. There was similarity of circumstance in that she and the Claimant were both probationers around the same time; they worked at the same hub; Ms Featherstone's probation was not extended. However, we accepted the evidence of the Respondent and made findings that:

126.1. The Claimant had a backlog of cases which had to be written up and she was consistently missing the 3-day write up requirement.

126.2. The Claimant had built up a substantial backlog of cases.

126.3. Ms Featherstone was in a very different position to the Claimant in that she did not have a backlog of cases which had to be written up. She was not consistently missing the 3-day write up requirement and she had not built up a substantial backlog of cases. The material circumstances include factors that operated on the mind of the discriminators. Those factors were not present in the case of Ms Featherstone. An appropriate comparator would have been someone who had an equivalent backlog of write ups or who was consistently failing to meet the requirements of the Respondent regarding write ups. That was not Ms Featherstone. She was not, in our judgement an appropriate statutory comparator. She can of course be an evidential comparator.

127. We therefore considered the position of a hypothetical comparator with the same write up issues as the Claimant. We considered whether the Respondent would have treated a white social welfare adviser with a similar backlog of write ups more favourably? However, the Respondent has satisfied us that it would not. One white employee was, in fact, dismissed for performance issues within six months of employment. That may not have been to do with a back log of write ups, but it demonstrates that the Respondent took action with regard to someone of a different protected characteristic. If anything, the Claimant was treated more favourably than that other person by not being dismissed. Ironically, in these proceedings the Claimant maintained that if the Respondent had genuine concerns about her productivity it should have dismissed her. That was her way of questioning the genuineness of the Respondent's position. We had no doubts at all about the genuineness of the Respondent managers' belief that the Claimant was failing to adhere to the Respondent's standards and that they had concerns about the Claimant not meeting them. The fundamental point is that the Respondent could have terminated the Claimant's employment earlier as it did in the case of a white female probationer, but it did not.

128. If the fact that the Claimant's probation was extended twice in breach of policy amounts to facts from which the tribunal could decide, in the absence of any other explanation, that the Respondent had contravened section 13, 26 or 27 of the Act, it matters not because at the end of the day, we were able to make positive findings on the reason for the extension of probation. We looked to the Respondent to explain the breach of probation policy and were satisfied by its explanation. The extensions of probation (nor indeed anything else that the Respondent's managers did) had nothing whatsoever to do with race or colour.

### **Victimisation**

129. The Respondent concedes that the email of **02 February 2024** was a protected act. The alleged detrimental treatment was set out in the following paragraphs:

Para 13.1: Did Judith Wood-Archer or Nick Dixon tell the Claimant that she had to start the process of working to generalist certification again?

Para 13.2: Did Claire Hall claim that the Claimant's work was below standard?

130. We have already found and concluded that the Claimant was not told that she had to start the process of working to generalist certification again. Therefore, the Claimant has not made good the facts asserted here. Nor could we see evidence of Claire Hall telling the Claimant that her work was below standard. The Claimant did not address this in her witness statement. In any event, to the extent that she was substantially behind in her write ups, the Claimant's work was below standard, whether she accepts it or not and, by letting her know this, the Claimant was not subjected to any detriment.

131. That her work was below standard was communicated to her clearly by **Miss Philipson, Mr Laing** and **Mr Dixon**. The Claimant knew that she was not getting cases written up as the Respondent expected. This was not something that had suddenly happened after her

email of **02 February 2024**. By managers telling her this, it had nothing whatsoever to do with her 'protected act' as set out in her email. They were simply stating the reality.

132. Therefore, the claim of victimisation fails and must be dismissed.

### **Final remarks**

133. All the claims in these proceedings are dismissed. We would go as far as saying that the claims were wholly without merit. The Respondent breached its policy by extending her probation three times. Had **Miss Philipson** and **Mr Laing** appreciated that only one extension was within the policy, it may well have been that the Claimant would have been dismissed within 9 months. But she was not. She was given further chances (albeit outwith the policy). The sad part of all of this for all concerned is that, had the Claimant accepted the perfectly understandable explanation given to her regarding her personal data, had she followed the guidance given to her repeatedly about writing cases up after each client, had she got to grips with her backlog and had she identified three cases for assessment, she probably would have enjoyed a rewarding career with the Gateshead Citizens Advice. All of that was within her own grasp. The managers around her were supportive and understanding. Sadly, owing to her rather bleak and suspicious view of the world, she chose to make unfounded allegations of institutional racism and rather scandalous allegations of fraudulent malpractice without regard to the potential reputational impact on the organisation. It may have been otherwise had there been the slightest basis for making such serious allegations but there was none. Our judgement may be hard to listen to for the Claimant but we are of the view that the Claimant needs to hear this spelled out to her.

Employment Judge **Sweeney**

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Date: 15 May 2025

## APPENDIX

### List of issues

#### **Jurisdiction**

1. Given the date the Claim Form was presented [13 April 2024] and the dates of early conciliation [05 February 2024, date of receipt by ACAS of EC notification and 18 March 2024, date of issue of EC Certificate], were the complaints of direct discrimination and/or harassment related to race and/or victimisation made within the time limit in section 123 Equality Act 2010? The Tribunal will decide:
  - 1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
  - 1.2 If not, was there conduct extending over a period?
  - 1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
  - 1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
    - 1.4.1 Why were the complaints not made to the Tribunal in time?
    - 1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

#### **Direct race discrimination (s13 EqA)**

2. The Claimant is black African and s/he compares her treatment with that of her white colleague with whom she worked.
3. The Tribunal will have to decide on the following:
  - 3.1 Did Alex Tod, Kayleigh Phillipson, Judith Wood-Archer, Sam Laing and Darren Mayne ignore and choose not to take reasonable steps to address the Claimant's complaints of: **07 December 2022, 27 May 2023, 17 July 2023, 18 September 2023** and **02 February 2024**?
  - 3.2 Did Kayleigh Phillipson fail and refuse to record information on what stage the Claimant was at or what she was working toward following the informal progress review meetings on 19 December 2022, and the meetings in March, April and May 2023?

- 3.3 Did Kayleigh Phillipson fail to assess the work the Claimant had done with clients for the purposes of putting the Claimant forward to a national assessor for her to be assessed and graded as a generalist, level 1, 2 or 3?
- 3.4 Did Kayleigh Phillipson fail put the Claimant forward for generalist certificate consideration, something the Claimant said she should have done after Kayleigh Phillipson told the Claimant before December 2022 that she was going to pass her probation?
- 3.5 Did Nick Dixon or some other manager of the Respondent instructing Nick Dixon make the Claimant start the training process all over again?
- 3.6 Did Nick Dixon or some other manager instructing Nick Dixon put the Claimant under unnecessary supervision on **09 November 2023**?
- 3.7 Did Judith Wood-Archer deliberately and actively refuse to address and deal with the negligence of Kayleigh Phillipson after the Claimant's complaint and choose to blame other managers and ignore what needs to be done to put things right?
- 3.8 Did Judith Wood-Archer make the Claimant start the process of achieving a generalist certificate again when the Claimant had already completed what she needed to do?
- 3.9 Did Kayleigh Phillipson, on 19 December 2022, tell the Claimant in a 121 meeting that she had been rude to Alex Tod ('AT') of HR, that she needed to write an apology letter to AT and that she should be careful and be nice to AT if she wants to get her salary?
- 3.10 Did Kayleigh Phillipson, or any other manager instructing Kayleigh Phillipson, extend the Claimant's probation in December 2022 and again in March, April and in May 2023?
4. Was that less favourable treatment than the Respondent treated the Claimant's white colleague or was it less favourable treatment than the Respondent would have treated a hypothetical comparator?
  - 4.1 The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.
  - 4.2 If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether s/he was treated worse than someone else would have been treated.
5. If the Claimant was treated less favourably, was it because of race?
6. If so, was the Claimant's treatment of her a detriment?

**Harassment related to race (s26 EqA)**

7. Did A do the things in paragraph 3 above?
8. Did that amount to unwanted conduct?
9. Was the conduct related to race?
10. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
11. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect?

**Victimisation (s27 EqA)**

12. Did the Claimant do a protected act as follows:
  - 12.1 On 02 February 2024, she submitted a grievance in which she expressly or implied complained of a contravention of the Equality Act 2010?
13. Did:
  - 13.1 Judith Wood-Archer or Nick Dixon tell the Claimant that she had to start the process of working to generalist certification again?
  - 13.2 Claire Hall claim that the Claimant's work was below standard?
14. By doing so, did they subject the Claimant to detriment?
15. If so, did they do so because the Claimant did the protected act?

**Remedy for direct discrimination, harassment or victimisation**

16. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
17. What financial losses has the discrimination caused the claimant?
18. Has the claimant taken reasonable steps to replace lost earnings?
19. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?