



EMPLOYMENT TRIBUNALS

Claimant: Ms Sylvia Constance
Respondent: Harpenden Mencap

Heard at: Watford Employment Tribunal
On: 17,18,19,20,21, deliberation 24,25 February 2025

Before: Employment Judge Alliott
Members: Mrs J Hancock
Mr M Bhatti MBE

Representation
Claimant: Ms Christine Yates (McKenzie friend)
Respondent: Mr Jonathan Munroe (solicitor)

RESERVED JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claims of unfair dismissal, direct race and age discrimination and victimisation are dismissed.

REASONS

Introduction

1. The claimant was employed by the respondent as a Part-time Support Worker on 9 February 2016. Whilst still employed, by a claim form presented on 15 June 2022, following a period of early conciliation from 3 to 31 May 2022, the claimant brings complaints of age and race discrimination.
2. The claimant was dismissed on 13 June 2023. By a second claim presented on 24 July 2023, following a period of early conciliation from 14 to 17 July 2023, the claimant brings complaints of unfair dismissal, age and race discrimination and victimisation.
3. The respondent defends the claims.

The issues

4. The issues were finalised in a preliminary hearing heard by Employment Judge

Davison on 11 March 2024. They are as follows:-

“1. Time limits

- 1.1 Given the date the first claim form was presented and the dates of early conciliation, any complaint about something that happened before 4 February 2022 may not have been brought in time.
- 1.2 Given the date the second claim form was presented, any complaint about something that happened before 25 April 2023 may not have been brought in time. No findings of fact are made in this regard. Should it become relevant, the matter will require determination by the Tribunal considering, in particular, whether the Claimant’s second ACAS certificate can validly extend time (bearing in mind *HM Revenue and Customs v Garau [2017] ICR 1121* and subsequent decisions relevant to this point).
- 1.3 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 1.3.1 Was the claim made to the Tribunal within three months (plus early conciliation extension where relevant) of the act to which the complaint relates?
 - 1.3.2 If not, was there conduct extending over a period?
 - 1.3.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension where relevant) of the end of that period?
 - 1.3.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 1.3.4.1 Why were the complaints not made to the Tribunal in time?
 - 1.3.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Unfair dismissal

- 2.1 The parties accept that the Claimant was dismissed.
- 2.2 What was the reason or principal reason for dismissal? The Respondent says the reason was a substantial reason capable of justifying dismissal, namely an irrevocable breakdown in the relationship between the parties.
- 2.3 Did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.

3. Direct race discrimination (Equality Act 2010 section 13)

3.1 The Claimant states that she is Black British.

3.2 Did the Respondent do the following things:

3.2.1 Was the manager, Ms Claire Wilson (CW), cold and non-responsive to friendly, courteous interactions with the Claimant.

The allegations made by the Claimant are:

- ☐ On 28 June 2021 CW said to the claimant *"you are not listening because you have blinkers on"*.
- ☐ On 4 October 2021 CW submits an unspecified safeguarding concern to Harpenden City Council regarding the Claimant's alleged conduct with a resident on the 4 October 2021.
- ☐ On 6 October 2021 CW suspends the claimant without warning.
- ☐ Sometime after suspension on 6 October 2021 CW requests written statements from Natalie Bryant, Sajana Baba, and Nasmine Ahmed to support suspension.
- ☐ On 15 December 2021 CW writes to Grant Pegg (GP), Peninsular Face2Face Consultant, *"A number of staff including SC were hostile towards me as a new manager."*
- ☐ On 15 December 2021 CW writes to GP, *"In July 2016 .. at that time the service was failing and there were a number of safeguarding issues. ..I have an email dated July 20th (2016) that I sent to my manager ...and within that I stated that SC took a contract at Pine Court and cancelled her shifts ..."*
- ☐ On 15 December 2021 CW writes to GP that on 5 June 2021, *"I could see it was SC ... on her mobile phone, and she was arguing loudly with someone on the phone."*
- ☐ On 15 December 2021 CW writes to GP that she said to the claimant on 4 August 2021, *"SC wanted to complain about me, and I advised that she could contact Angela Duce."*
- ☐ On 15 December 2021 CW writes to GP making a false allegation that, *"The tenant did not want layout changed or furniture moved and raised this with me at a later stage... SC listed all the tenants .. and that she doesn't stick to the allocated hours."*
This is an example of the non-responsive / hostile approach of CW towards the Claimant

What connection does C perceive there to be between these acts and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

- ☐ The claimant links CW's actions to the claimant's age and race on the basis that she was singled out for suspension; singling out the claimant for alleged historical safeguarding issues and a failing service; failing to show that suspension was a proportionate act under the circumstances at the time.
- ☐ CW's actions were taken solely to violate the claimant's dignity, and create an intimidating, hostile, and humiliating environment for SC; and treat her less favourably because of her rejection, reasonable refusal to submit quietly to her

suspension, ie 14 October 2021 grievance alleging age and race discrimination, and harassment.

3.2.2 Did Ms Wilson have a longstanding history of making false allegations to discredit the Claimant and show personal dislike and be critical of the Claimant behind the scenes:

□ On 22 October 2021 Natalie Bryant, standing in for CW, says to Tamara El Araby and Sophie Rayner, HCC safeguarding practitioners, *"One incident with Ben that we are have (sic) discussed, and another being with another resident."* i.e. raises a further alleged safeguarding issue against the Claimant on the instruction / with the approval of CW.

□ On 25 October 2021 CW writes to Anthony Harris (AH), Peninsula Face2Face Consultant:

- i) CW states to AH that Nasmine Ahmed told her on 3 October 2021 that *"...Sylvia had actually made quite a few changes to those, to the hours"*.
- ii) CW states to AH that on 4 August 2021 the claimant *"...shouted that I was hassling her and that she wasn't late, so don't even bother speaking to me until it's time for the meeting."*
- iii) CW states to AH that on 4 October 2021 *"...a brand new member of staff, that had been her experience the day before (3 Oct), I'd planned to speak to Sylvia about it, which didn't then happen because a few days later a tenant made a safeguarding allegation and then Sylvia was suspended."*
- iv) CW states to AH *"People were then raising concerns about how Sylvia was, her conduct really with the, kind of, new members of staff."*
- v) CW states to AH *"From what Ben said, he wasn't expecting to have any support from her, she's arrived at his flat and said that she wanted to change the furniture around so that it was more like one of the other residents that lives here."*
- vi) CW states to AH that Ben told her on 4 October 2021, *"And, like I said, been (sic) in post since June, but his experience of sharing a concern before had resulted in her threatening him and I think he didn't want to, kind of, he was worried about going through that again..."*
- vii) CW states to AH that Ben said to her *"He was very clear that he should feel safe in his own home and be able to do, certainly, from his point of view, to have his furniture laid out in his room how he chooses to have it."*
- viii) CW states to AH, *"I believe ... he said it was a box of chocolates that he'd actually purchased for somebody else ... and she came into his flat, opened the chocolates, he asked her not to, I think he explained that they were a present but she ate them anyway."*
- ix) CW states to AH, *"She ... came across as somebody who had her own idea about how the day should run and would disregard those, ..those planned shifts really so that she could go and support a different tenant for whatever reason."*
- x) CW states to AH that Sajana Baba had told her that on her first day of temping, *"From what Sajana had said on that particular day the difficulties seemed to come about that Sajana didn't feel Scott needed any shopping... I know from both of them who've then said to me, from Nasmine and Sajana, that Sylvia was cross, she was angry, quite intimidating and, you know, couldn't be reasoned with ..."*
- xi) CW writes to AH, *"So, that's for Scott.. What Sajana has reported there about Scott, that's standard practice for him and how his finances are"*

dealt with. I believe that the concern more was that Sylvia was just, kind of, fabricating this activity that she felt Sajana needed to go and do because she wasn't happy with what she was doing with Scott on that day. "

xii) CW states to AH, *"Natalie, who I know has also shared a statement and has raised a number of concerns about Sylvia's conduct with me in supervision, some of the things she's shared have been specifically around that... So, one of the examples was with a different tenant who I've actually today (25 Oct) been asked to raise a separate safeguarding referral."*

xiii) CW states to AH that *"It's about somebody who's got early onset dementia. One of the things Natalie shared to me was Sylvia just showing no respect to him ... and kind of saying, "If you don't do it, I'm going to shower you myself, because you're not clean and you're not, and that's my impression of her, from what I've seen of the interactions...."*

xiv) CW states to AH, *"From what Sajana said on that particular day the difficulties seemed to come about that Sajana didn't feel Scott needed any shopping and I think, again, this was something that Nasmine noticed."*

xv) CW states to AH that *"It's not unusual for anybody new to the service to have a really, really difficult time then, that they really are quite bullied and intimidated to work in a way that Sylvia feels should happen. And that had been going on for quite a period of time, had been reported previously, but, you know, not upheld."*

xvi) CW writes to AH, *"There was also a further incident where she's had a physical altercation with another member of staff... again, nothing, kind of, seems to have come of that aside from just a warning about her conduct."*

xvii) CW writes to AH, *"I can check. Yeah, I can check, but I think it was during the pandemic, but at the start, I believe. I mean here are letters on her file and they just said that it was like a real concern, that it wasn't a warning, but it was a letter of concern .."*

xviii) CW writes to AH, *"So there's been another couple of members of staff, one of them was a casual member ..who has since left.. and then another member of staff also from Stairways who came over here, yeah, who again just, yeah, it's the level of intimidation. ..The member of casual staff that spoke to me, I think she was making cups of tea for everybody, you know, "would you like a cup of tea?" And Sylvia shouted at her, "How dare you insinuate that I need a rest, it's not your job to tell me to – (sic)".*

xix) CW states to AH, *"Natalie and Sajana are actually voicing that in a way that is more like a workplace bullying."*

☐ On 26 October 2021 Natalie Bryant writes a false statement under the instruction of CW, *"There was an occasion several months ago when I raised concerns with my manager at the time about Sylvia and how she was behaving towards a tenant with early onset dementia... I spoke to the tenant .. and was shocked to hear that Sylvia had threatened to shower them if they didn't start showering themselves properly."*

☐ On 26 October 2021 NB writes a false statement under the instruction of CW, *"..another member of staff came into the office and asked about a tenant and a test, they needed to do but was reluctant to do it. Sylvia said "It's tough, they have to do it. I'll make them do it, I did it last time."*

☐ On 26 October 2021 NB writes a false statement under the instruction of CW, *"This tenant likes to wear underwear under their pyjamas at bedtime. This is*

something Sylvia refuses to support them with as she disagrees with them and other members of staff about it."

☐ On 26 October 2021 NB writes a false statement under the instruction of to CW, *"The tenant also accused Sylvia of opening and attempting to eat a box of chocolates that they had brought for another tenant's birthday. Again, I am unsure of the outcome of this."*

☐ On 7 January 2022 CW writes to Sophie Rayner, Safeguarding Practitioner, *"With regard to the other tenant that Natalie mentioned I have not submitted this as separate alert as we planned to include as part of this investigation."* This evidences CWs attitude towards the Claimant and that she subverted the safeguarding process to achieve her desired outcome (i.e. the suspension of the Claimant).

☐ On 3 February 2022 Anthony Harris writes, *"The employer also raised further concerns that they felt something was being covered up with the previous manager."* i.e. CW has raised unfounded issues with the investigator to paint the Claimant in a bad light.

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ The claimant was treated less favourably and to her detriment on the basis of her protected characteristics of age and race. The protected act is the claimant's complaints of being victimised, and targeted by CW.

☐ The evidence shows that CW and Natalie Bryant doubled down, increased the number of complaints against the claimant, including adding more residents and unnamed staff, proactively sought retrospective allegations from those she managed, and withheld the detailed allegations from the claimant. CW's conduct put the claimant at a significant disadvantage compared to others.

☐ The statements made by CW show a calculated attempt to discredit the claimant, portray her as obstructive, shouty, bullying of new and casual staff, and controlling, ie labelling the claimant a troublemaker.

☐ CW abused her position by asking staff to find fault and provide statements against the sole black, qualified claimant, weeks after the suspension.

☐ The allegations made by the claimant's junior and less experienced peers, were collected by CW (date unknown), and were taken as true, with the Peninsula Face2Face Investigator taking CW's word for the allegations, without undertaking a robust investigation, eg, by not asking why things happened, probing what he was told, not seeking evidence, and being selective in respect of which parts of the allegations

(written statements) he put to the claimant. This put the claimant at a particular disadvantage compared to others.

☐ It is inconceivable that a young temp on her first day would make a formal Complaint, concerning race and /or age, about a permanent key support staff member, without encouragement from CW.

☐ Nor would a competent, reputable manager seek to obtain such complaints, and/or not make any attempt to verify and discuss with the claimant before taking the opportunity to suspend.

3.2.3 In addition to the factors listed in 3.2.2. Did Ms Wilson make false allegations to discredit the Claimant, namely stating that:

- ☐ the Claimant regularly disagreed with the rota;
- ☐ the Claimant changed the rota
- ☐ On 8 December 2021 in an email from Angela Duce, CE and CW's line manager, to Grant Pegg, *"Claire was tasked with getting the hours and rota right which did not go down well with a number of staff... Staff continually altered the rota or worked different hours..."* The Claimant avers that CW has requested AD to provide this supporting statement to the investigator to show the Claimant's disagreement with the rotas and alterations to the same. AD simply complied with CW request without question.
- ☐ On 25 January 2022 CW writes to AH, *"I think she always worked a Saturday with Scott, and if I'd have altered that because we'd got some new members of staff and actually Scott's needs are able to be met by somebody new and whereas some of our other tenants need somebody with a bit more experience, such as Sylvia, so that would be like one of the reasons that I would alter things. But Sylvia would just disregard it."*
- ☐ On 25 January 2022 CW states to AH, *"Nasmine ... informed me that Sylvia had actually made quite a few changes to those-, to the hours."*
- ☐ On 25 January 2022 CW states to AH, *"The rota will go out with what the staff are meant to be doing with tenants, but Sylvia would quite often change that."*
- ☐ On 25 January 2022 CW states to AH, *"... she was disregarding those arrangements and she would go and support tenants."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

- ☐ CW makes numerous blanket safeguarding and bullying allegations, and states that the claimant consistently ignored the rota. Angela Duce and CW cite *"a number of staff..."* and single out the claimant for suspension and disciplinary action, without making an honest attempt to verify the raft of allegations made and directed against the claimant. These management actions subjected the claimant to a detriment for making a protected act, specifically, alleging harassment, victimisation, age, and race discrimination against CW, and for not submitting passively to her suspension and persistent vilification.
- ☐ The claimant was the only black support worker, the only staff member with a RCN qualification, and the only staff member CW did not ask for an explanation or written statement for the disciplinary investigation. This omission is victimising, less favourable treatment.

3.2.4 Did CW email Ms K Stafford and Mr G Wood on 20 July 2016 criticising the Claimant for not being able to cover a shift?

- ☐ On 27 November 2021 in an email from CW to CW, she finds an email dated 20 July 2016. This email is sent from CW to Karen Stafford and Gary Wood, *"...Danielle and Laurent are away and Beatrice on sick leave. Sylvia took a*

contract at Pine Court and cancelled her shifts ...which hasn't helped."

☐ On 15 December 2021 CW states to Grant Pegg, *"I do have an email dated July 20th (2016) that I sent to my manager at the time about the staffing difficulties and within that I have stated that SC took a contract."*

☐ On 15 Dec 2021 CW refers Grant Pegg to an email sent from Support User Flat 3 & 5 to her, dated 8 June 2018, subject heading: *sylvia shifts and policies*, *"I had a look through the rota with Sylvia but she needed to check her pine court rota before committing to any shifts or days off she was free to cover."*

☐ On 15 December 2021, CW states to Grant Pegg, *"I do... recall that SC did double book herself on more than one occasion ..."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ These claims single out the claimant, and implicitly criticise her for not being able to provide cover for Stairways staff absences, and regularly overbooking. CW referring these old emails and 'remembering' the claimant's inability to cover extra shifts some 5 and 3 years in the past, demonstrates early hostility towards the claimant and an attempt to taint her reputation with wider management. This is a victimising (on the grounds of race and age), discriminating action, favouring Stairways (absent) staff Danielle, Laurent, and Beatrice, over the Pine Court based claimant.

☐ CW's actions in dredging up old emails are an obvious attempt to plant the seed in the investigator's mind, specifically, by inference make out the claimant to be unreliable, untrustworthy, uncooperative, i.e. promote negative stereotyping of the claimant (on the possible grounds of age or race) . It is notable that no white staff member are subject to retrospective criticisms concerning the Rota despite Angela Duce and CW's allegations that many staff were not working the allocated rota'd hours.

3.2.5 Did CW lose her temper, berating, shouting and humiliating the Claimant on 28 June 2021 by:

3.2.5.1 Saying *she had blinkers on*; and

3.2.5.2 Refusing to accept that the proposed 4pm meeting was outside of the Claimant's rostered shift and insisting that the Claimant voluntarily assist a service user after 4pm needed to be added to the rota

The claimant avers some of these interactions were made orally, she denies some happened at all, there are extracts of the evidence that refer to the same as listed below:

☐ On 15 December 2021 CW writes to Grant Pegg, *"I did say that SC had overbooked herself ... I did say to SC that it felt as though she had blinkers on."*

☐ On 15 December 2021 CW writes to GP, *"I changed the rota for that day to reflect that she had stayed until 4pm to support a tenant...."*

- ☐ On 15 December 2021 CW writes to Grant Pegg, *"I did say that SC had overlooked herself particularly by extending her day..."*
- ☐ On 15 December 2021 CW writes to GP, *"I explained that Gary was expecting to meet her and that she had double booked herself..."*
- ☐ On 15 December 2021 CW writes to GP, *"I phoned SC to see who she was supporting as the rota said she had already gone off duty and that she was at a massage appointment with a tenant and that she had arranged it after her working hours."*
- ☐ On 29 December 2021 GP writes, *"GP cannot substantiate that CW was aggressive in her manner but does find that the reference to "blinkers" may not have been an appropriate and professional comment to make to an Employee."*
- ☐ On 29 December 2021 GP writes, *"This point of Grievance is therefore partially upheld ...although it is not found that this was made aggressively or made to SC with the intent of belittling her."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

- ☐ CW's response to SC's grievance allegations reveals overt hostility and a negative management style towards the claimant. This demonstrates a discriminatory pattern in the way in which CW deals with the claimant. CW cites Gary Wood, who is not involved in the grievance, to support her version of events, berates the claimant for an act of kindness, and retrospectively states to the Peninsula investigator that her abusing the claimant is down to the claimant double-booking herself. CW continually places the blame for her own bad behaviour on SC.
- ☐ CW's management style towards the claimant is in stark contrast to her interactions with, and support towards Natalie Bryant, Nasmine Ahmed, and Sajana Baba. The claimant was put at a particular disadvantage by CW asking employees, and a temp, to retrospectively find fault with the claimant.

3.2.6 On 5 July 2021 did Ms Wilson angrily accuse the Claimant of being *too loud*?

- ☐ On 15 December 2021 CW writes to GP, *".. as she entered the building, I told SC that she could be heard shouting from upstairs."*
- ☐ On 15 December 2021 CW states to GP, *"I raised the incident with Sylvia in supervision as I wanted to ensure she was aware of the policy for taking personal calls..."*
- ☐ On 29 December 2021 GP writes, *"On a balance of probabilities, SC's conversation must have been sufficiently loud..."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

- ☐ These statements show consistent hostility towards the claimant, following the

claimant's grievance against CW. CW's testimony is designed to misdirect the investigator and deflect from the actual allegations, in this case that CW angrily shouted at the claimant for being on her mobile. CW tries to portray the claimant as someone who doesn't follow policy and places the blame for her bad tempered outburst on the claimant.

☐ CW's consistent testimony is to try and portray the claimant as a loud, aggressive black woman, who is determined to flout policy and who has a long history of ignoring the rota.

3.2.7 On or around 26 July 2021, did CW, or another under CW instruction, take the Claimant off a shift for *Stairways* without informing her.

☐ On 15 December 2021 CW writes to Grant Pegg, *"I have no knowledge of myself or anyone else removing SC from shifts. Rota cover and shift cover at that time would have been arranged by myself, 2 senior staff and my manager."*

☐ On 15 December 2021 CW states to GP, *"On occasion we do need to cancel shifts... I do ...recall that SC did double book herself on more than one occasion ..."*

☐ On 15 December 2021 CW states to GP, *"I was informed that when staff called to say she was expected on shift ... she .couldn't come in .. as her shifts overlapped."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ CW's testimony is evasive and inconsistent. She continues to obfuscate and criticise the claimant, ie unfavourable treatment.

3.2.8 Did Ms Wilson deny being responsible for taking the Claimant off shift in a meeting on 26 July 2021, then later state that another staff member had made an error when correcting the error, and deleted the Claimant from the rota?

☐ On 15 December 2021 CW writes to Grant Pegg, *"I do not recall cancelling any shifts ... any member of the senior team (would make) contact with the casual worker either by phone, text or email to inform if the shift is no longer needed."*

☐ On 15 December 2021 CW writes to GP, *"I asked the Senior at the (team) meeting if she knew why, and she didn't."*

☐ On 15 December 2021 CW writes to GP, *"I did not remove SC's name ..I believe the Senior Support Worker (HL) made a mistake..."*

☐ On 15 December 2021 CW states to GP, *"SC was tippexed out of that shift by error and was immediately offered the hours once she reported it to me."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ CW's testimony is inconsistent, evasive, and misleading.

3.2.9 On 4 August 2021, did CW state that she would report the Claimant for being on her mobile outside the residents' home?

The evidence relied upon by the Claimant to suggest the threat to report was made is:

- ☐ On 15 December 2021 GP writes to CW, *"Is it correct that you said to her (SC) that you were going to report her for this incident and that if she wasn't happy she could go to Angela. ...did you suggest that you would report her and on what basis?"*
- ☐ On 15 December 2021 CW writes, *"I raised the incident with Sylvia in supervision as I wanted to ensure she was aware of the policy for taking personal calls at work."*
- ☐ On 15 December 2021 CW writes to GP, *"I was concerned with SC's conduct that day and lack of awareness that she was within someone else's home."*
- ☐ On 15 December 2021 CW writes to GP, *"SC stated that she wanted to complain about me ... and I advised that she could contact Angela Duce to do this."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

- ☐ CW fails to answer the question choosing to give ambiguous answers to the investigator's questions. CW shows a pattern of making counter accusations in attempts to justify her conduct, redirecting the investigator to an allegation that CW was in breach of the phone policy. CW's responses to the claimant's grievance, provide evidence of ongoing and further victimisation, discrimination, and less favourable treatment.

3.2.10 Did CW, falsely testify to the third party consultant that she had apologised to the Claimant and referred the consultant to the Respondent's telephone policy in an attempt to deflect from her outburst directed at the Claimant?

- ☐ On 15 December CW writes to GP, *"I apologised if anything I said made her feel berated ..."*
- ☐ On 29 December 2021, GP writes in his grievance investigation report, *"GP has considered the policy in the Employee Handbook on page 23 for use of mobile phones."*
- ☐ On 29 December 2021 GP writes, *"It is .. noted that CW advised that had (sic) apologised to her ..."*
- ☐ On 29 December 2021 GP writes, *"GP finds that CW's account of events is at variance with the statement made by SC."*
- ☐ On 29 December 2021 GP writes, *"..regardless of the issue of the volume of her voice on the call, (SC) should not have sought to gain entry to commence her shift while still engaged in her phone call."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ As is shown by the documentation, the investigator takes CW's word over the claimant's without making an attempt to verify accounts. It is notable that GP ignores the allegation that CW shouted aggressively at SC and chooses to unquestioningly believe CW. This is less favourable treatment, victimising, and discriminatory.

3.2.11 Did CW, imply the Claimant was critical of other faiths and cultures on 4 October 2021, following the Claimant's suggestion about written meal plan, and twist the Claimant's actions into allegations of bullying and intimidation?

☐ On 25 October 2021, CW writes to Anthony Harris, "... to me, you know, it really feels as though Sylvia, kind of, doesn't have those same kind of values."

☐ On 15 December 2021 CW writes to GP, "SC said that she understood they (referring to the 2 agency staff) were of a different culture and probably didn't know what was acceptable..."

☐ On 29 December 2021 GP writes that SC stated at interview, "Claire I think it would be a good idea if for the new staff, the new agency staff, if we could do like a meal plan for breakfast. And I told another staff that as well. And I said, maybe we should put it on the menu, so if they're with the agency, they will know what to give them, especially at weekend for breakfast."

☐ On 29 December 2021 GP writes that SC said, "And that's all I said to Claire, and Claire said she's going to bring it up in the team meeting."

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ CW consistently fabricates comments that she cannot, nor attempts to substantiate. Similarly, the investigator makes no effort to obtain evidence for either party, choosing to take CW's word at face value.

☐ By raising 'different cultures' and asserting that SC criticised 'they', CW thinks it acceptable to pit those with the protected characteristic of race, against each other while CW stokes the fire. CW clearly sees the claimant as being less than her stating to AH that the claimant doesn't share her (superior) values.

3.2.12 Did CW suspend the Claimant on 6 October 2021 without warning

☐ On 6 October 2021 Claire Wilson suspended the claimant over the telephone.

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ The claimant suffered a significant detriment by being suspended without warning, without being given any opportunity to defend herself from unspecified allegations. The suspension came after a number of micro-aggressions targeting the claimant. It is clear from the documentation that the claimant was targeted by CW at an early stage, and before becoming manager at Pine Court.

□ The suspension was the culmination of a long-standing campaign as evidenced by the undated, unspecified, unsubstantiated nature of the allegations, gathered retrospectively, behind the claimant's back. CW has no first-hand knowledge of the allegations, these referring to historic events and long before CW's promotion. The resident, Ben, has never been interviewed; and the safeguarding allegation (unspecified) states the *date & time of alleged incident of abuse/neglect: 01 October 2018*.

□ CW's performance management of the claimant falls short of the standards expected of a competent, anti-racist manager. CW, by her own testimony, provides only a negative, critical narrative of the claimant, and it is apparent that she had her sights set on getting rid of the claimant. In Natalie Bryant she fostered a willing accomplice. The claimant has learnt (by one of her witnesses) that NB was soon promoted by CW. This blatant show of favouritism providing further evidence of discrimination and detriment to the claimant.

3.2.13 Did AD and / or CW fail to inform the Claimant of the allegations against her in a timely fashion

□ On 6 October 2021 over the phone, SC said to CW, *"oh my god, who complained?"* CW replied, *"can't say"*.

□ On 7 October 2021 in a letter received by SC on 14 October 2021, CW writes, *"The investigation is to consider allegations of: Emotional/psychological abuse of a tenant in your care"; and "Bullying and intimidation of colleagues"*.

□ On 14 October 2021 SC emails Angela Duce, *"As per the ACAS Code of Conduct, I have a right to be informed of the allegations and be given an opportunity to put my case in response. I ..request full details of the allegations."*

□ On 11 November 2021 CW writes to the claimant, *"In the meantime, you remain suspended ... pending an investigation into allegations made against you."*

□ On 29 December 2021 Grant Pegg writes that CW stated, *"I advised SC that she was being suspended due to a safeguarding allegation and bullying allegation ...A letter to confirm details of the suspension to follow."*

□ On 24 January 2022 in a letter to SC, Angela Duce writes, *"You are required to attend an investigation meeting to be held on Tuesday 25th January 2022 at 2pm. The purpose of the meeting is to discuss some concerns we have about your conduct."*

□ On 24 January 2022 in an email sent at 09:00:57 to SC, Angela Duce writes, *"Please find attached an invite to an independent investigation meeting for Tuesday 25th January 2022."*

□ On 24 January 2022, SC emails AD, *"please clarify the process being followed and have the courtesy to name the party you are involving. I .. remind you that I have the right to defend myself by being informed of the allegations against me, the right to be accompanied, and the right to be given reasonable time to prepare."*

□ On 25 January 2022 in an email sent at 10:13:07 to SC, Anthony Harris writes, *"I want to introduce myself... appointed to conduct the Investigation Meeting ... on Tuesday 25th January 2022 at 2.00 pm." ... "As this is simply an*

investigation, there is no statutory right to be accompanied to this meeting."

☐ On 16 February 2022 in a letter to SC, Angela Duce writes, *"The concerns raised are serious and outline a shortfall in our expectations of conduct, particularly with regards to our duty of care to the tenants."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ The claimant was treated unfairly, unfavourably, and to her detriment by being denied details of the allegations and being prevented from preparing a timely and reasonable defence.

☐ After the disciplinary investigation held by AH on 25 January 2021, SC is still denied knowledge of the allegations, expectations, that she has been deemed to have failed to meet.

3.2.14 By virtue of the complaints against the Claimant, did CW target a racist campaign against her

☐ See above.

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ Less favourable, detrimental treatment following the claimant's October 2021 grievance; January 2022 grievance appeal; 6 October 2021 suspension; and second grievance submitted March/April 2022 following Angela Duce's disciplinary sanction. The respondent refused to hear the claimant's second grievance, instead focusing on the appeal to the first grievance which was considerably out of time and irrelevant.

3.2.15 Did AD or CW (or another acting on their behalf) prolong the period of suspension to give the Respondent time to strengthen the allegations against the Claimant

☐ On 8 February 2022 in an email to AH, SC writes, *"Please forward me the notes without delay and in line with the ACAS Code... I remain unaware of the nature of the allegations, where, when and who raised the allegations, and have not yet received a valid reason for suspending me without notice and due cause."*

☐ On 10 February 2022 in an email to Angela Duce, SC writes, *"I have been informed by the Investigator, that the notes of my suspension are being withheld from me. My interview... was held on 25th January 2022, ... please send them to me without delay."*

☐ On 25 February 2022 Angela Duce writes to SC, *"These (notes) were not sent to me or anyone else ... until yesterday after I had finished work for the day. ...I have attached these as requested."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ The claimant's grievance against CW was investigated by Grant Pegg on 28 October 2021 and the date of his report is 29 December 2021.

☐ It took 3 months before the claimant was interviewed by Anthony Harris on 25 January 2022. While it is accepted that the respondent wanted to address the claimant's grievance before her disciplinary, SC (and her representative) was kept unaware of the details of the allegations and disciplinary process to be undertaken. This meant the claimant could not adequately prepare, ask for witnesses, know what she was up against, ie she was kept on the back foot throughout.

☐ AH interviewed SC and CW on 25 January 2022 and wrote his report on 3 February 2022. Natalie Bryant and Sajana Baba were interviewed on 21 January 2022. It is unclear when CW sent AH the witness statements, although it is clear they were written some time after the suspension on 6 October 2021, with NB's statement being dated 26.10.2021. It is reasonable to assume that Sajana Baba and Nasmine Ahmed were asked by CW to write and backdate their statements.

3.2.16 Did AD or CW fail to contact the Claimant whilst she was suspended

☐ On 11 November 2021 Angela Duce writes to SC, *"...In the meantime, you remain suspended... pending an investigation into allegations made against you."*

☐ On 3 August 2022, CW writes to SC, *"I note that you have been on sick leave since 21st February 2022..."*

☐ On 9 March 2023, SC writes to Kate Bell, *"Please clarify your position in respect of wanting to hold a review meeting following my long-term sickness absence. ...Please also clarify why my request to be referred to Occupational Health on 5 August 2022 has been ignored to date."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ The claimant was not told how long her suspension would last, nor was she contacted for six months after her suspension, and submission of sick certificates. This demonstrates a lack of care and concern for the claimant, and failure to comply with the ACAS Code for suspension, and the respondent's own internal sickness policy.

3.2.17 Did AD and/ or CW fail to allow the Claimant the opportunity to prepare and obtain representation at meetings

3.2.18 Did AD tell the Claimant on 13 July 2021 *this is simply an investigation, there is no statutory right to be accompanied to this meeting*

☐ On 25 January 2022, Angela Duce emails SC, *"...it is not usual protocol to be represented in an investigation meeting."*

☐ On 25 January at 10:13:07 Anthony Harris emails the SC, *"I want to introduce myself ... to conduct the Investigation Meeting ... on Tuesday 25th January 2021 (sic) at 2.00pm. ... As this is simply an investigation, there is no statutory right to be accompanied to this meeting."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ The ACAS Code states: Allow the employee to be accompanied at the meeting

13. Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- A formal warning being issued; or
 - The taking of some other disciplinary action
 - The confirmation of a warning or some other disciplinary action (appeal hearings)
- <https://www.acas.org.uk/acas-code-ofpractice-on-disciplinary-and-grievance-procedures>

☐ As the claimant was issued a disciplinary sanction, and it had been agreed between Angela Duce, Claire Wilson, and HCC Safeguarding team that SC would not be returning to Pine Court, failing to allow her to be accompanied to her disciplinary investigation was a denial of her right to a fair hearing.

☐ It would seem that Angela Duce asked Anthony Harris to support her in telling the claimant that she need not be accompanied. This particularly disturbing knowing she had already conferred with CW and agreed SC was not to return to Pine Court (see point 3.2.21 below).

3.2.19 Did CW hijack the investigation meeting, deny the Claimant clear and concise details of the allegations, and ask the Claimant to give her account of unknown allegations

☐ On 7 January 2022 in an email to Claire Wilson from Tamara El Araby, *"I feel it is important to convey that any Disciplinaries/Grievances should be seen as separate from the internal investigation related to the safeguarding adults concern."*

☐ On 7 January 2022 CW writes to Sophie Rayner, *"With regard to the other tenant that Natalie mentioned I have not submitted this as separate alert as we planned to include as part of this investigation."*

☐ On 10 February 2022 Emma Curran, Safeguarding Practitioner, writes to CW, *"As we agreed please could you send me ...the internal investigation in relation to NB only. Please include and evidence all relevant care plans and record sheets with any interpretation of findings.... by 14/02/22 so it can be reviewed and evidenced in the safeguarding so an outcome can be determined."*

☐ On 16 February 2022 Angela Duce writes to the claimant, *"The concerns raised are serious and outline a shortfall in our expectations of conduct..."*

☐ On 18 February 2022 CW writes to Sophie Rayner, *"Evidence surrounding the allegation was inconclusive, however there are conduct and capability issues to be addressed..."*

☐ On 29 April 2022 CW writes to Tamara El Araby, *"I've just spoken with my CEO and she has asked if you would feel happy sending an email which states that the case conference went ahead and that on the balance of probability this case was substantiated and that the safeguarding adults process is now closed."*

☐ On 6 May 2022, Tamara El Araby emails CW, *"I have spoken to our team*

manager here and she has advised that we would not be able to do this."

☐ On 1 March 2023 in it's Amended Particulars of Response, *"The Respondent avers that The Local Authority ultimately upheld the safeguarding allegations."*

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

☐ HCC Safeguarding (the LA) explicitly directed there be two separate investigations for the safeguarding issue raised by CW. The one safeguarding meeting held by HCC with Ben and Natalie Bryant did not clarify the allegations. During the meeting NB raised an anonymous safeguarding allegation about another resident. The latter allegation was never raised as a safeguarding issue to the LA. At no time did the LA uphold the safeguarding allegation raised by CW, them playing no part in the process other than to await further information from CW.

☐ Anthony Harris took all the allegations taken by CW seriously. These included undated, unwitnessed, hearsay comments, and the additional 'safeguarding' issue raised by NB. It is evidenced that CW invited staff to speak badly of the claimant, after the suspension, to add weight to her unfounded allegation of "bullying/intimidation of staff".

☐ The claimant only had sight of the actual allegations after receiving AH's 3 February 2022 report. The way in which CW escalated and deployed the allegations, shows that she was determined to aggressively pursue a targeted hate-campaign against the claimant. The lengths CW went to, far exceeds a proportionate means of achieving an aim, unless her aim, achievement, was to get rid of SC.

3.2.20 Did CW increase the number of allegations against the Claimant following her suspension

☐ On 22 October 2021 in Strategy Meeting Minutes, Tamara El Araby or Sophie Rayner writes, *"Ben stated that he told Natalie ..around 6-7 months ago."*

☐ On 22 October 2021, Tamara El Araby writes, *Natalie has raised concerns before with regards to this support worker.... Sophie will clarify this with Clare and whether this was raised through to the Safeguarding Team, alleged incident reported 7 months ago."*

☐ On 26 October 2021, Natalie Bryant writes, *"This is a statement of the behaviour I have witnessed regarding Sylvia Constance since my employment started with Harpenden Mencap in (December) 2020."*

☐ On 3 February 2022, AH writes his headline allegations: "1) Allegation of asking SB to go shopping; 2) Allegation of cooking a meal against the meal plan; 3) Asking the resident to go out shopping for a card against his will; 4) Insisting on the stool sample; 5) Forcing the resident to take a shower; 6) Resident wishes to wear underpants under his pyjamas; 7) Allegation of eating chocolates; 8) Unprofessional and inappropriate conduct with a colleague during an induction; 9) Moving of a resident's furniture against his will; 10) Disregard for the rota."

☐ On 3 February 2022 Anthony Harris writes, *"...that SC forced a resident to go*

out ... she received a call from the resident's mother (Julie Caseberry, Scott Caseberry's parent and Chair of Trustees at the time), asking SC to remind the resident to purchase a birthday card for a family relative."

□ On 3 February 2022 AH writes, "*AH explained that the comments raised by the residents were serious and that these had become a safeguarding concern, however SC cannot understand where these comments and allegations come from...*"

What connection does C perceive there to be between this and the C's race, age and the fact that she did protected acts? Which protected act does she connect this to?

□ As evidenced, the allegations against the claimant are raised long after the suspension. NB's allegations are hearsay and uncorroborated. SB's statement was a criticism of SC for being given tasks she did not understand or want to do. Nasmine Ahmed made no complaint against SC until CW asked her to write and backdate a statement on her hour or so spent shadowing SC and which in any event, wasn't a complaint. CW collated all 'witness' statements and put these and her own statements (see point 3.2.2) to AH at interview, ie CW was both presenting manager and chief witness for others.

□ Eight of AH's investigation allegations concern residents, Scott, Ben, and Nigel (4th bullet above). Scott allegations = 1, 2, and 3; Nigel allegations = 4, 5, and 6; Ben allegations = 7 and 9; staff allegations = 8 and 10. All the allegations are undated, uncorroborated, and hearsay. The Claimant was only made aware of the allegations on 3 February 2022 on receipt of the investigation report. The detail of those allegations was only made apparent upon receipt of the witness statements (and other relevant documents) in August 2023. There are no evidenced allegations of 'bullying/intimidation of staff members', indicating that there were no tangible gross misconduct allegations for which to suspend the claimant at the time.

3.2.21 Did CW / the Respondent fail to follow a fair, independent, rigorous, transparent and competent grievance and disciplinary process, including at the disciplinary meeting on 25 January 2022

□ On 7 January 2022 in an email CW writes to Sophie Rayner, "*... We will now proceed to the safeguarding element in more detail with her and proceed to disciplinary hearings. We have decided ...the hearing will be held by my manager*" (Angela Duce).

□ On 24 January 2022 in a letter to SC dated 21 January, Angela Duce writes, "*You are required to attend an investigation meeting ..on Tuesday 25th January 2022 at 2pm... Possible outcomes ...are that we may decide that it is necessary to pursue a formal disciplinary procedure with you... If you fail to attend...we will treat your non-attendance as a separate issue of misconduct.*"

□ On 24 January 2022 in an email to Angela Duce, SC writes, "*I...have the right to defend myself by being informed of the allegations against me, the right to be accompanied, and the right to be given reasonable time to prepare.*"

□ On 3 February 2022 AH writes in his report, "*In light of the evidence, AH recommends that SC attends a meeting to discuss the concerns of the employer,and the course of action to be undertaken to address these matters which require immediate and sustained improvement.*"

- On 8 February 2022 in an email to AH, SC writes, *“I was and continue to be denied knowledge of the full allegations, thereby not being given a fair opportunity to defend myself. Please forward me the notes without delay and in line with the ACAS Code. Specifically, I remain unaware of the nature of the allegations, where, when, and who raised the allegations, and have not yet received a valid reason for suspending me without notice and due cause.”*
- On 16 February 2022 in a letter to SC, Angela Duce writes, *“The concerns raised are serious and outline a shortfall in our expectations of conduct.... Should these concerns continue you will be subject to formal disciplinary action. ... Please take this letter as notification... that suspension has been lifted on the basis that the evidence surrounding the allegations is inconclusive.”*
- On 18 February 2022 CW emails Sophie Rayner, *“Evidence surrounding the allegation was inconclusive, however there are conduct and capability issues to be addressed... We want to ensure that BH feels safe ..within his home and do not feel it would be appropriate for the worker to return to Pine Court. ”*
- On 21 February 2022 acting as SC’s supporter and McKenzie Friend, Christine Yates (CY) emailed Angela Duce, *“I am requesting sight of all the witness statements and formal ‘complaints’ the Investigator alludes to in the attached notes. ... If you do not have evidence of the allegations, please clarify on what basis you have made the decision to upbraid Sylvia and consider her at fault, specifically, provide us with the full Report setting out your reason.”*
- On 28 February 2022, CY emailed Angela Duce, *“I have spoken to Sylvia and have received the Investigator’s report. I note it does not provide any written statements and formal complaints... It would appear everything hinges on Claire Wilson’s word, notably without any dates and evidence of when these nonevents took place.”*
- On 9 March 2022 In an email to Angela Duce, subject line: NB safeguarding, CW writes, *“I have been asked to urgently send evidence regarding the investigation and protection plan, as well as outcome of the HR disciplinary process re the staff member and if she is now working at stairways of the investigation (sic) relating to NB....”*
- On 23 March 2022 in an email to CW from Tamara El Araby, *“Please could you get back to me as matter of priority as we would like to arrange a case conference.”*
- On 1 April 2022 CW writes to Tamara El Araby, *“Ben ... has been updated so knows that SC will not be returning to Pine Court...”*

What connection does C perceive there to be between this and the C’s race, age and the fact that she did protected acts? Which protected act does she connect this to?

- Angela Duce, CW, and AH withheld details of the allegations from the claimant throughout the entire disciplinary process, including the safeguarding allegations. Only one safeguarding issue was reported to HCC concerning one resident. This ‘concern’ was raised by CW to HCC electronically on 4 October 2021. HCC did not clarify, identify the issue raised. The claimant did not have sight of the safeguarding allegation (and complainants’ statements) until receiving the draft bundle on 14 August 2023 and which states the safeguarding issue refers to something unspecified that occurred on 1 October 2018.

□ Anthony Harris had no firm allegations from CW and her witnesses and failed to put clear allegations to the claimant at her interview on 25 January 2022. AH interviewed CW on the same day as SC's interview. He made little attempt to clarify dates and circumstances around events he questioned SC about. It is clear that no one was asked to corroborate the allegations, and AH failed to seek and interview witnesses who could shed light on past events.

□ AH failed to seek evidence in support of the claimant's testimony and chose to disbelieve her outright. It is especially marked that AH failed to follow up SC's witnesses, eg Julie Caseberry.

□ AH demonstrates a lack of transparency, honesty, competence, fairness, rigour, as per: - Failing to disclose communications between him, AD and CW; Failing to check that the claimed allegations (events) actually took place; failing to clearly identify the allegations and distinguish between unwarranted criticism and formal misconduct allegations; failing to be independent, fair and rigorous, by taking uncorroborated, second and third-hand hearsay allegations; overlooking that the witness statements were backdated and submitted to him weeks after SC's suspension; failing to inform SC that she had the right to be accompanied and not giving her time to prepare for interview; failing to find fact, and regardless, make a preconceived decision to believe the complainants and judge the claimant guilty, ie playing the role of investigator, judge and jury.

□ The process undertaken by AH, led and influenced by AD and CW, shows a concerted witch hunt against the claimant. AH's actions show his willingness to be collusive and willing to overlook the possibility of racism and ageism, preferring to go along with the complainants' unreliable and inconsistent, statements, demonstrating unconditional (perverse) support for the respondent.

3.2.22 Did CW / the Respondent fail to handle the Claimant's grievance speedily, honestly and independently between April 2022 and 12 June 2022 and cause her unnecessary distress

□ On 7 January 2022 CW writes to Sophie Rayner, *"With regard to the other tenant that Natalie mentioned I have not submitted this as separate alert as we planned to include as part of this investigation..."*

□ On 10 February 2022 Emma Curran, Safeguarding Practitioner, emails CW, *"As we agreed yesterday please ..send me the following so I can evidence (sic) for the safeguarding episode ... Please include and evidence all relevant care plans and record sheets with any interpretation of findings... root cause analysis and learning outcomes..."*

□ On 15 February 2022 SC emails Angela Duce, *I have requested full details of the allegations... Specifically, when were the allegations made, who by, who to, the specifics, and how and when were the allegations formally recorded... please send me the serious incident log with relevant dates and details that coincide with the allegations made against me; a copy of your serious incident reporting protocols; details of the allegations being notified to the Board and relevant regulatory bodies."*

□ On 21 February CY writes to Angela Duce, *"... I am requesting sight of all the witness statements lodged regarding a safeguarding issue, please clarify what was communicated to the complainant's family and the CQC (Care Quality Commission)."*

□ On 25 February 2022, CY emails Edel Harris, CEO, Mencap UK, *“... This is my detailed response to be taken (heard) in conjunction with a formal grievance against Angela Duce and Claire Wilson, submitted after the outcome of an unfair disciplinary process.”*

□ On 4 April 2022 Edel Harris writes to CY, *“Harpenden Mencap is an independently constituted charity that Royal Mencap Society (Mencap) has no process for investigating grievances against Network Partners... That being said we do have processes for managing complaints against Network Partners. We work with Network Partners to understand the complaint and to try to support parties to find a way forward....”*

□ On 7 April 2022 CY writes to Rachel Jones, HR Administrator, *“Dear Ms Caseberry, please find attached 4 documents relating to a formal grievance against Angela Duce, and Claire Wilson. ... We are not interested in any appeal findings (first grievance) at this late stage...”*

□ On 11 April 2022, Gary Caseberry emails Peter Taylor, subject: FWD: Confidential: For the attention of Julie Caseberry. *“Hi Peter, I was doing some Golf Day emails over the weekend and found this email in my in box. It looks like it has been sent to me (and not Julie) in error. ... I have not currently read the attachments but if you would like discuss (sic) this further or you think I can be of any assistance please give me a call.”*

□ On 19 April 2022 in an email to Claire Wilson and Ben, Tamara El Araby writes, *“I have phoned both of you ... to talk about arranging a meeting called a safeguarding adult’s case conference. This will be a chance for us to ..talk about the concerns that were raised about a support worker who was helping you at home. We will talk through the investigation that Mencap has completed ... “*

□ On 17 May 2022 Angela Duce writes to Kate Oldroyd, *“As we discussed last week, are you able to write to her (CY) and inform her that you will not be part of the Grievance process and that she must use our internal processes?”*

□ On 23 May 2022, CY emails Peter Taylor, *“Please respect Sylvia’s right to have her grievance, submitted 31 March 2022, heard in a timely manner... Please clarify what steps you are taking in order to mitigate conflict of interest relevant to your involvement in the grievance.”*

□ On 8 June 2022 Nick Latham, Trustee of HM, emails Kate Oldroyd, *“.. a meeting has been set up for next week to hear the appeal against the grievance decision from October last year.”*

□ On 12 June 2022 Joseph Gill, Peninsula Face2Face consultant, emails SC, *“I ... will be conducting your grievance appeal hearing at 9.30am on Monday 13th June 2022.”*

□ On 9 March 2023 SC writes to Kate Bell, *“... in respect of arrangements to ensure my safety once I return to the workplace, until my grievance submitted 4 April 2021 (sic) is heard, I am left in limbo in respect of knowing what to expect when returning to the workplace.”*

□ On 5 May 2023 Kate Bell emails CY, *“I understand the grievances and appeal were all concluded ... and Harpenden Mencap consider these matters to be closed.”*

□ On 10 May 2023, CY emails Kate Bell, *“To avoid further misconceptions, it was made clear that the January 2022 grievance appeal was out of time, and the Claimant had requested her **disciplinary outcome grievance** to be prioritised.”*

□ On 26 July 2023, Peter Taylor writes to SC, *“Please find attached the report of the consultant which was compiled subsequent to the hearing. Having carefully considered the report of their findings and recommendations, it is my decision to reject the appeal in full ...”*

What connection does C perceive there to be between this and the C’s race, age and the fact that she did protected acts? Which protected act does she connect this to?

□ To date, the claimant’s grievance against her disciplinary sanction, made as a formal complaint in March/April 2022, has not been heard.

□ The evidence reveals that HCC agreed to allow HM (Harpden Mencap) to investigate and manage all the allegations. No case conference was held concerning Ben, no safeguarding issues were logged concerning Nigel and Scott, no case management paperwork, reporting of serious incidents was submitted. This shows that the safeguarding procedure and process was subverted by the respondent, and they were permitted to ‘mark their own homework’.

□ Peter Taylor, Julie Caseberry’s replacement as Chair of Trustees, commissioned another Peninsula Face2Face Consultant, to hear SC’s January 2022 grievance appeal, despite numerous requests for her April 2022 complaint to be prioritised.

3.2.23 Did CW / the Respondent deny the Claimant’s request to be given time to concentrate on getting back to full health

□ On 9 June 2022 CY emails Peter Taylor, *“As per ... you are asked not to contact Sylvia Constance... in order to give Sylvia time to recover from the ordeal she has been put through and so that she can focus solely on her recovery. ... Sylvia’s daughter can attest to the impact on Sylvia’s health caused by your refusal to act in good faith.”*

□ On 10 June 2022 Nick Latham emails Kate Oldroyd, *“There is another hearing on the grievance appeal scheduled for next week, chaired again by an independent expert, but CY has indicated that SC will not be attending. I believe Peninsula are advising that this should go ahead and will review any information presented, either verbally or in writing.”*

□ On 10 June 2022 Peter Taylor writes to SC, *“Further to the letter from Christine Yates received yesterday indicating that you will not be attending the Grievance Appeal Hearing on Monday 13th June 20-22 at 9.30am. ..If you do not attend, the Hearing will be held in your absence.”*

□ On 3 August 2022, CW writes to SC, *“I note that you have been on sick leave since 21st February 2022 due to an Adjustment DisorderI would like to propose that a meeting is held at Stairways on Friday 12th August at 10am.”*

□ On 5 August 2022, CY emails CW, *“... Please make arrangements to refer Ms Constance to an independent, qualified Occupational Health (OH) Service, as should have been done many months ago.”*

□ On 13 March 2023, SC emails Kate Bell, “... *I note that you did not answer my questions about Occupational Health referral, and what is happening with my outstanding grievance.*”

3.2.24 Did PT display a propensity to throw his weight around

□ On 24 May, Peter Taylor writes to SC, “...*I write again to request you provide a convenient date... that you will be available to attend a grievance appeal hearing.*”

□ On 26 May 2022, SC emails Peter Taylor, “..*I have submitted a detailed document for my grievance appeal as well as a separate grievance document and would ask you to respect that they are two distinct processes... I feel that you are deliberately putting me under pressure to attend an unnecessary (outdated) grievance appeal and are not prioritising my grievance.*”

□ On 6 June Peter Taylor writes to SC, “... *I am writing to confirm that an impartial Consultant from Peninsula’s Face2Face service will hear your appeal on Monday 13th June 2022.*”

□ On 9 June Christine Yates writes to Peter Taylor, “...*Your rejection of Sylvia’s preference and right to a fair process has significantly affected her health to the point where she is currently unfit to be interviewed. Every time you have written to her and repudiated her rights, you have made her more stressed, anxious, upset. She suffers sleepless nights, increased anxiety, is fearful and tearful all the time. She has had to have her medication increased and prolong her counselling sessions.*”

3.2.25 The Claimant’s dismissal on 13 June 2023.

□ On 13 June 2023 Kate Bell writes to SC, “*It is with deep regret that I feel we have no other option but to conclude an irrevocable breakdown in the relationship between Harpenden Mencap and yourself has occurred. For the avoidance of doubt your employment will terminate by way of Some Other Substantial Reason (SOSR) effective 13 June 2023.*”

3.3 Was that less favourable treatment?

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

If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant says she was treated worse than Natalie Bryant and Sajana Bibi as comparators and a hypothetical comparator.

3.4 If so, was it because of race?

3.5 Did the Respondent’s treatment amount to a detriment?

3.6 The Tribunal will decide in particular:

3.6.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

- 3.6.2 could something less discriminatory have been done instead;
- 3.6.3 how should the needs of the Claimant and the Respondent be balanced?

4. Direct Age Discrimination (Equality Act 2010 section 13)

4.1 The Claimant states that she was 71 years of age at the relevant time.

4.2 Did the Respondent do the following things? The Claimant repeats the allegations of less favourable treatment from the direct race discrimination claim here.

4.3 Was that less favourable treatment?

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

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

The Claimant says she was treated worse than Natalie Bryant and Sajana Bibi as comparators, and a hypothetical comparator.

4.4 If so, was it because of age?

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

4.6 Was the treatment a proportionate means of achieving a legitimate aim?

4.7 The Tribunal will decide in particular:

- 4.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
- 4.7.2 could something less discriminatory have been done instead;
- 4.7.3 how should the needs of the Claimant and the Respondent be balanced?

5. Victimisation (Equality Act 2010 section 27)

5.1 The Respondent accepts that the Claimant did the following protected acts:

5.1.1 Complain of being discriminated against because of her race and age in her grievances dated 14 October 2021 and 4 April 2022?

5.1.2 Bring her first Tribunal claim.

5.2 Did the Respondent do the following things: The Claimant repeats the allegations of less favourable treatment from the direct race discrimination claim here.

5.3 By doing so, did it subject the Claimant to detriment?

5.4 If so, was it because the Claimant did a protected act?

5.5 Was it because the Respondent believed the Claimant had done, or might do, a protected act?

6. Remedy for unfair dismissal

6.1 Does the Claimant wish to be reinstated to their previous employment?

6.2 Does the Claimant wish to be re-engaged to comparable employment or other suitable employment?

6.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

6.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the Claimant caused or contributed to dismissal, whether it would be just.

6.5 What should the terms of the re-engagement order be?

6.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

6.6.1 What financial losses has the dismissal caused the Claimant?

6.6.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

6.6.3 If not, for what period of loss should the claimant be compensated?

6.6.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

6.6.5 If so, should the Claimant's compensation be reduced? By how much?

6.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

6.6.7 Did the Respondent or the Claimant unreasonably fail to comply with it?

6.6.8 If so is it just and equitable to increase or decrease any award payable to the Claimant? By what proportion, up to 25%?

6.6.9 If the Claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?

6.6.10 If so, would it be just and equitable to reduce the Claimant's compensatory award? By what proportion?

6.6.11 Does the statutory cap of fifty-two weeks' pay or £105,707 apply?

6.7 What basic award is payable to the Claimant, if any?

6.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

7. Remedy for discrimination or victimisation

7.1 Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

7.2 What financial losses has the discrimination caused the Claimant?

7.3 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

7.4 Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

7.5 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.6 Did the Respondent or the Claimant unreasonably fail to comply with it by the way it conducted the disciplinary and grievance processes?

7.7 If so is it just and equitable to increase or decrease any award payable to the Claimant?

7.8 By what proportion, up to 25%?

7.9 Should interest be awarded? How much?"

The law

Unfair dismissal

5. Section 98 of the Employment Rights Act 1996 provides as follows:-

98 General.

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- ...
- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
 - (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
 - (b) shall be determined in accordance with equity and the substantial merits of the case."

Direct discrimination

6. Section 13 of the Equality Act 2010 provides as follows:-

"13 Direct discrimination

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

- (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.”

7. Section 23 of the Equality Act 2010 provides as follows:-

“23 Comparison by reference to circumstances

- (1) On a comparison of cases for the purposes of section 13... there must be no material difference between the circumstances relating to each case.”

Victimisation

8. Section 27 of the Equality Act 2010 provides as follows:-

“27 Victimisation

- (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.
- (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - ...
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.”

Acas Code

9. Under the Grievance Code of Practice the following is recorded:-

“Hold a meeting with the employee to discuss the grievance.

- 33. Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received.
- 34. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.”

The evidence

- 10. We had a hearing bundle of 573 pages. We also had a supplementary bundle consisting of the pleadings in claim 2.
- 11. We had witness statements and heard evidence from the following:
 - (i) The claimant.

- (ii) Ms Pauline Smith, a colleague.
 - (iii) Ms Claire Wilson, Community Services Manager.
 - (iv) Ms Angela Duce, Chief Executive Officer.
12. Ms Yates provided us with a skeleton argument and Mr Munroe provided us with written closing submissions.

The facts

13. The respondent is a charity which provides support to adults with learning disabilities. The respondent has two properties in Harpenden, namely "Stairways" and "Pine Court." The two buildings are approximately one mile apart. Pine Court has 11 residents living in their own individual flats. Stairways consists of residents' rooms within the building. The support workers deliver individualised care and support for the residents.
14. The claimant describes her race as Black British.
15. The claimant was born on 8 April 1951 and consequently was 71/72 at the relevant times.
16. The respondent's employee handbook contains the following:-

"SERVICE USER RELATIONS

The home provides care services to our service users. In addition, some of our employees are employed to provide at-home care in our service users own homes. Due to this relationship, our service users may, on rare occasions, require that such an employee be removed from working with them in accordance with their agreement with us. In such circumstances, we will investigate the reasons for such requests. However, if our service users maintain their stance we will then take all reasonable steps to ensure that alternative work is provided. If this is not possible we may have no alternative but to terminate such an individual's employment. This procedure is separate from any concurrent disciplinary matter that may need to be addressed."

17. And also under "Disciplinary procedures":

"Every effort will be made to ensure that any action taken under this procedure is fair, with you being given the opportunity to state your case and appeal against any decision that you consider to be unjust.

The following rules and procedures should ensure that:

...

- (c) You will only be disciplined after careful investigation of the facts and the opportunity to present your side of the case. On some occasions temporary suspension on contractual pay may be necessary in order that an uninterrupted investigation can take place. This must not be regarded as disciplinary action or a penalty of any kind;"

18. And under "Grievance procedure"

“If you feel aggrieved at any matter relating to your work (except personal harassment, for which there is a separate procedure following this section), you should first raise the matter with the person specified in your statement of main terms of employment, explaining fully the nature and extent of your grievance. You will then be invited to a meeting at a reasonable time and location at which your grievance will be investigated fully. You must take all reasonable steps to attend this meeting. You will be notified of the decision, in writing, normally within 10 working days of the meeting, including your right of appeal.

If you wish to appeal you must inform a director within 5 working days. You will then be invited to a further meeting, which you must take all reasonable steps to attend. As far as reasonably practicable, the company will be represented by a more senior manager than attended the first meeting (unless the most senior manager attended that meeting).

Following the appeal meeting you will be informed of the final decision, normally within 10 working days, which will be confirmed in writing.”

19. During the course of this hearing Ms Yates, on behalf of the claimant, referred to the Acas Code of Practice on Disciplinary and Grievance Procedures on a number of occasions. As such, we set out what appear to be the relevant parts:-

“7. If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right may be allowed under an employer’s own procedure.

8. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.”

20. Further, under the Guidance:-

“Suspension can leave individuals feeling prejudiced, demotivated and devalued. It should therefore only be used after very careful consideration. It should always be made very clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction. The individual should be reminded and reassured that a fair procedure will follow in which their point of view will be listened to and fairly considered.

Some individuals may find it extremely distressing to be told they are being suspended. This may be the case even if the person does not show any obvious signs of distress. Employers should bear this in mind in deciding when and how to communicate a decision about suspension. It is good practice to encourage a suspended employee to access some immediate support and to offer help to do this. For example, to offer to contact a colleague, friend or relative of their choosing to meet them immediately.”

21. The claimant was employed at Pine Court. We have heard evidence in relation to three residents, namely Mr B, Mr N and Mr S.
22. Claire Wilson became the Manager of Pine Court on 1 June 2021. Claire Wilson had formerly been the manager of Stairways, and she took responsibility for both premises at that time.
23. It would appear that the existing manager of Pine Court, Mr Andy Butterfield, was

made redundant. In her evidence, Angela Duce told us:-

“Question: Are you aware that there was a communication problem with the claimant and Claire Wilson?

Answer: I was aware that when Claire moved to Pine Court there was a lot of resistance. They [the staff] didn’t like that the previous manager had gone and I asked her to try and resolve some issues there.”

24. We were not specifically told what the issues were, but they may have included rotas. Angela Duce refers to attending a meeting with all the staff including the claimant. It was an open meeting about rotas and anyone could raise any concerns.

25. In her evidence Claire Wilson said as follows:-

“Question: How were you getting on with Sylvia?

Answer: I took over from the previous manager. It was difficult for me, as the whole team were unhappy. It was a large team to have a new manager and there were a lot of service issues. I knew there were a lot of issues.”

26. Claire Wilson agreed that communication with the claimant could be difficult.

27. We have an email dated 8 December 2021 from Angela Duce to Grant Pegg (a Peninsula Face2Face consultant who conducted a grievance hearing for the claimant and produced a grievance report dated 8 December 2021) which includes:-

“In May 2021, I made the decision along with the trustees to remove the manager from Pine Court due to a number of concerns with the service. Claire agreed to take on the role of Registered Manager as I sought to integrate the service better with Harpenden Mencap. There were major concerns over the way the rota was being managed and whether tenants were receiving their commissioned hours. In fact, we found that the published rota did not reflect what was actually happening or the needs of the tenants. Claire, along with Heather, the Senior Support Worker, was tasked with getting the hours and rota right which did not go down well with a number of staff who were used to “doing their own thing.” Staff continually altered the rota or worked different hours without communicating to the manager or others.

I called a staff meeting on 28th July 2021 which was held in the common room at Pine Court. I made it clear that the hours on the rota had to be a true reflection of what was worked and that all commissioned hours and activities had to be delivered. In this meeting, SC [the claimant] raised that she had been taken off the rota for a particular shift. CW [Claire Wilson] stated that she didn’t know this and would look at it after the meeting. She made it clear that no one’s hours were being reduced and that due to being short-staffed in comparison to what should be delivered there would be additional hours available.”

28. We have a document attached to the Face2Face Grievance report by Grant Pegg of Peninsula which is titled “Questions for Claire Wilson”. Although our copy is undated, we assume that it is the 15 December 2021 communication from Claire Wilson to Grant Pegg set out in the list of issues under 3.2.1, 3.2.4, 3.2.5, 3.2.6, 3.2.7, 3.2.8, 3.2.9, 3.2.10 and 3.2.11. In this document the following is recorded by Claire Wilson:-

“4. How would you describe your working relationship with Sylvia Constance (SC)?

There was a lot of opposition to me taking over from the previous manager and a number of staff including SC were hostile towards me as a new manager. Over the four months SC was working this did not improve. I have remained professional and introduced some changes to bring the service in line with legislation and good practice. My relationship with SC has been that of line manager who is trying to support her (and the team) to adjust to the changes but have found SC unwilling to talk through the changes or listen to any other perspective. The relationship on my part has been professional although I have found SC to be continually openly hostile towards me.”

29. The consultant’s recommendations include:-

“GP finds that there is a breakdown in the working relationship between CS and CW and that this is causing a disturbance to the workplace. GP would therefore recommend that consideration be given to taking part in workplace mediation in order to build a professional workable relationship between both parties.”

30. Also in the questions for Claire Wilson document the following is recorded:-

“8. Would you normally greet members of staff and exchange pleasantries? Did you treat SC differently to this? If so, why?

Yes I do. I do not treat SC in a different manner. SC has responded to such pleasantries negatively often times sighing at me or responding with one word answers on 1 occasion she shouted at me not to hassle her as she was busy.”

31. We find that when Claire Wilson came in as manager at Pine Court she was tasked with tightening up procedures and this was not universally popular. We find that there was a communication issue between the claimant and Claire Wilson. On the one hand we have the claimant asserting that she was friendly and courteous in her interactions with Claire Wilson whereas Claire Wilson clearly raised issues with the claimant’s attitude and conduct. It is against those general findings that we go on to consider the individual facts that are complained about in this case.

32. Issue 3.2.4 is:

“Did CW email Ms K Stafford and Mr G Wood on 20 July 2016 criticising the claimant for not being able to cover a shift?”

33. The cited extracts from contemporaneous documentation are accurate.

34. The email dated 20 July 2016 actually states:

“The rota for August is actually worse given the numbers of people on annual leave. Danielle and Laurent are away and Beatrice on sick leave. Sylvia took a contract at Pine Court – and cancelled her shifts with a few days notice which also hasn’t helped.”

35. The context is Claire Wilson dealing with staff shortage and the claimant cancelling shifts at short notice. However, on the basis that the tone is mildly critical, we find that the answer is ‘yes’ and issue 3.2.4 is proved.

36. We go on to consider whether that was less favourable treatment. We have taken as a comparator a younger white colleague who had cancelled shifts at short

notice. We find that such a comparator would have been treated exactly the same with the same comment. Accordingly, we find that this was not less favourable treatment.

37. Issue 3.2.5 is:

“Did CW lose her temper, berating, shouting and humiliating the claimant on 28 June 2021 by:

3.2.5.1 Saying *she had blinkers* on; and

3.2.5.2 Refusing to accept that the proposed 4pm meeting was outside of the Claimant’s rostered shift and insisting that the claimant voluntarily assist[ing] a service user after 4pm needed to be added to the rota.”

38. On 28 June 2021, the claimant was rostered to work until 2.30pm. The claimant had an appointment to meet Gary Wood concerning health and safety at sometime between 2.30 and 4pm. We do not know the exact time. In her grievance dated 14 October 2021, the claimant refers to it being a meeting at 4pm whereas the information available to Grant Pegg was that another employee was scheduled to see Gary Wood at 4pm.

39. The claimant told us that she voluntarily took a resident for a massage at 2.30. The massage would probably have lasted until 3.30.

40. We found the claimant’s evidence on this issue confused and unconvincing. In her oral evidence to us she stated that she could not make a meeting at 4pm as her daughter had a health issue and she had to go to London. It is striking that this was not referenced in the grievance dated 14 October 2021. The grievance suggests that the claimant went to see Claire Wilson before she took the patient for a massage. However in the grievance the claimant references the massage beginning at 3.30pm. Claire Wilson denied that the claimant came to her in advance to tell her that she could not make the appointment.

41. The quotes from Claire Wilson on 15 December 2021 and from Grant Pegg on 29 December 2021 in the list of issues are accurate.

42. We find that Claire Wilson did say to the claimant that she had blinkers on or words to that effect. We find that the context was that the claimant had missed an appointment with Gary Wood whilst voluntarily taking a resident for a massage. As such, she could be characterised as having double booked herself. We find that the claimant did not clear this with Claire Wilson in advance.

43. We accept that Grant Pegg found that the reference to blinkers may not have been an appropriate and professional comment to make to an employee. Nevertheless, we find that the context was that the claimant had indeed double booked herself by working voluntarily outside her rostered hours. The next sentence in the report states:

“GP does find that SC did not appear to want to listen or appreciate what CW was trying to explain to her”.

44. We find that Claire Wilson did not refuse to accept that the proposed 4pm

meeting was outside of the claimant's rostered shift. We find that Claire Wilson did change the rota for that day to reflect that the claimant had stayed until 4pm to support a tenant. This was clearly to the claimant's financial advantage.

45. In the claimant's grievance she puts this comment as being made before she took the resident for the massage. Claire Wilson states that it was in a telephone call after the claimant had missed her appointment with Gary Wood. We accept Claire Wilson's evidence on this point. It may also have been said in a supervision meeting on 4 August 2021.
46. Whenever the comment was made, we find that Claire Wilson did not lose her temper and did not berate, shout at or humiliate the claimant. We find that Claire Wilson made an understandable comment in circumstances where the claimant had missed an appointment due to working unscheduled hours, the very issue which Claire Wilson had been tasked to deal with.
47. Accordingly we find the answer is 'no' and issues 3.2.5.1 and 3.2.5.2 are not proved.
48. Issue 3.2.6 is:

“On 5 July 2021 did Ms Wilson angrily accuse the claimant of being too loud?”

49. Once again, all the quoted extracts from the contemporaneous documents in the list of issues are accurate save for the first one. The extract actually reads:

“... I opened the door and SC took out one of the headphones continuing her phone call as she entered the building. I told SC that she could be heard shouting from upstairs....”

50. The claimant told us that on 5 July 2021 she had forgotten her key and consequently was pressing the button to gain admittance. The claimant told us that she had earphones in and was on her mobile to someone talking about an uncle's funeral. The claimant told us she did not think that she was loud. She referred Claire Wilson coming down “like a lunatic.” In her grievance she references Claire Wilson saying aggressively that she was shouting and that she could hear her from the second floor. Claire Wilson does not deal with this in her witness statement but in her document “Questions for Claire Wilson” she puts it as follows:-

“I was the only staff member in the building and was on the top floor in the office. I could hear shouting and I thought it was a problem with a tenant so went into the main hallway to see if I could see where it was coming from. There was no one there so went back to the office and realised the shouting was from outside. Initially I thought it was someone walking past however it continued so I went down to the middle floor then finally the main entrance as it appears someone was in the front garden. When I got downstairs I could see it was SC who was using headphones on her mobile phone, and she was arguing loudly with someone on the phone. At this stage I was not aware if SC was on duty or just arriving, but I opened the door and SC took out one of the headphones continuing her phone call as she entered the building. I told SC that she could be heard shouting from upstairs and asked SC to take a break so she could finish her phone call away from the building and the tenants' homes.”

51. We find that Claire Wilson probably did accuse the claimant of being too loud.

We find that the claimant probably perceived Claire Wilson to be angry. Accordingly we find the answer is 'yes' and issue 3.2.6 is proved. However, we also find that on this occasion the claimant probably was being loud. We find it inherently improbable that Claire Wilson would have come down two flights of stairs inaccurately to accuse the claimant of being loud unless she had indeed heard her from upstairs through an open window. The claimant actually said to us "Sometimes you are in your own world, after a bereavement, I didn't think I was loud."

52. We have taken as a comparator a younger white colleague who was speaking loudly on a mobile in the vicinity of Pine Court. This was potentially (was she or was she not at work?) contrary to the policy on taking phone calls at work but in any event had the potential to upset residents. In our judgment, such a comparator would have been treated in exactly the same way by Claire Wilson. Accordingly, we find that this was not less favourable treatment.

53. Issue 3.2.7 is that:

"On or around 26 July 2021, did CW, or another under CW instruction, take the claimant off a shift for Stairways without informing her"

54. In actual fact this should be a reference to a shift for Pine Court.

55. Once again, the extracts from the contemporaneous documents quoted in the list of issues are accurate.

56. The claimant told us that her name had been "Tippexed" off the rota. Whilst somewhat old fashioned, it was accepted by the claimant's witnesses that Tippex was used to make amendments to the shift rota. As such, this cannot have been an uncommon occurrence as a container of Tippex was clearly on hand to be used. However, all parties agreed that if that happened the individual concerned would be told. It appears that the claimant was not told that her name had been Tippexed out for a shift.

57. We have already quoted the extract where Angela Duce deals with this meeting. All the contemporaneous evidence was to the effect that Heather, a Senior Support Worker, had removed the claimant's name in error.

58. We find that Claire Wilson did not personally take the claimant off a shift for Pine Court or instruct another to do so. We find that the claimant was probably not informed which should not have happened and probably irritated her.

59. Consequently, we find that the answer is 'no' and issue 3.2.7 is not proved. As it happens, the moment Claire Wilson discovered the error, the claimant was offered the shift back but by then she had made alternative arrangements.

60. Issue 3.2.8 is:

"Did Ms Wilson deny being responsible for taking the claimant off shift in a meeting on 26 July 2021, then later state that another member had made an error when correcting the error, and deleted the claimant from the rota?"

61. Once again, all the quoted extracts from the contemporaneous documents in the

list of issues are accurate.

62. We find that Claire Wilson did deny being responsible for taking the claimant off the shift and later stated that another staff member had made an error. Consequently, we find the answer is 'yes' and issue 3.2.8 is proved.

63. We have taken as a comparator a younger white colleague. In our judgment, such a colleague would have been treated exactly the same. Consequently, we find that this was not less favourable treatment. It was merely accurately reporting what had happened and why.

64. Issue 3.2.9 is:

“On 4 August 2021, did CW state that she would report the Claimant for being on her mobile outside the residents' home?”

65. Once again, the quoted extracts from the contemporaneous documentation are accurate.

66. This incident took place at a supervision meeting on 4 August 2021 between Claire Wilson and the claimant. Claire Wilson has produced some handwritten notes of that meeting which she told us had been created within a week or so of the meeting. This records the phone usage being raised and that section concludes:-

“Sylvia wanted to record that she is unhappy and wants to know the procedure of reporting about a manager. Shared Angela Duce contact in the first instance.”

67. We find that Claire Wilson did not state that she was going to report the claimant for being on her mobile outside the residents' home. Firstly, we do not see why Claire Wilson would have had to escalate the matter given that she was, herself, the claimant's line manager. If it was a matter of conduct needing some sort of correction, then Claire Wilson was the person to do it, and, it appears, that she did so in this supervision meeting. We find that the only reference to Angela Duce was in the context of the claimant wanting to escalate a complaint to her.

68. Consequently, we find the answer is 'no' and issue 3.2.9 is not proved.

69. Issue 3.2.10 is:

“Did CW, falsely testify to the third party consultant that she had apologised to the Claimant and referred the consultant to the Respondent's telephone policy in an attempt to deflect from her outburst directed at the Claimant?”

70. Once again, all the quoted extracts from contemporaneous documentation are accurate. However, the context of Claire Wilson saying she apologised is as follows:-

“I apologised if anything I said made her feel berated but that I did need to ask questions as the manager of the service so that I can fully understand the support we are giving to tenants.”

71. We take that to be a conditional apology in the context of Claire Wilson legitimately seeking to manage the claimant's mobile usage in and around Pine

Court and the claimant complaining about Claire Wilson getting her back up and making her feel small. We do not find that this was an attempt to deflect the investigator away from her alleged outburst. We find that this was not false testimony.

72. Consequently, we find the answer is 'no' and issue 3.2.10 is not proved.
73. It is clear to us that the events of 4 and 6 October 2021 are the most important aspects of this claim. It is the respondent's case that colleagues of the claimant complained about her to Claire Wilson on 4 October 2021. Further, it is the respondent's case that resident Mr B complained about the claimant on 6 October 2021. Both those issues caused Claire Wilson to suspend the claimant on 6 October 2021.
74. The claimant has made very serious allegations against Claire Wilson. In her witness statement she asserts:-

“...Claire proactively asked staff to write complaints about me, most likely after my suspension.”

And

“I believe Claire changed her routine to get B alone, put words in his mouth, and then encouraged Natalie Bryant to make up further allegations to support her original suspension claims.”

And

“I am certain that Claire manufactured a case against me, manipulating B by pretending to care about him and give him the limelight, without explaining the consequences of his actions.”

75. Issue 3.2.14 then goes on to allege that by virtue of these complaints against the claimant Claire Wilson targeted a racist campaign against her.
76. Due to the importance of these events we have reviewed the evidence that we have in detail. The witness statement of Claire Wilson does not really assist.
77. The 3rd of October 2021 was a Sunday. Claire Wilson was not working that day.
78. Nazmin Ahmed was a new agency staff. She had been given an induction plan. However, the claimant made changes to the induction plan and took her to meet other tenants. One of the tenants was Resident S. The claimant, Nazmin Ahmed and Sajana Babu, another agency staff, went to see patient S. Certain events took place during the visit to patient S as the claimant was asked about them in the investigation interview and gave answers dealing with them.
79. We have a file note dated 4 October 2021 created by Claire Wilson. She states:-
- “During a planned induction meeting with NA today she raised concern about how SC had been talking with staff over the weekend. NA reported that she had been given an induction plan for the previous day however SC made changes to this and took her to meet other tenants instead of the planned hours. SC also explained to NA that she needed to check upon a tenant SC as he has support from agency staff and that was her

usual shift, so she needed to check everything was happening properly. NA observed SC giving instruction to SB in a way she felt was rude and demanding. She was raising her voice and telling SB that she had done everything wrong and was becoming increasingly angry with her, waving her arms around and chopping and changing her instruction to SB. NA said that she felt it was inappropriate to talk to SB that way especially in front of tenants and other staff. NA said SC made SB change the plans she had made with SC and no one had a choice but to follow her instruction. Both NA and SC supported different people than the rota and the arrangements made for NA induction shift.”

80. On 26 October 2021 Natalie Bryant made a statement which includes the following:-

“I was in the office of Pine Court when it was said to me by another member of staff that a new member of our staff Sajana had been reduced to tears by Sylvia. It was explained to me that Sylvia had shouted at her in front of a tenant and told them to get out of the tenant’s flat because she had no idea what she was doing and that she was upsetting the tenant. When asked about this Sajana said it was not the first time it had happened. She seemed to be scared of being alone within Pine Court with Sylvia. I reported this behaviour to my current manager.”

81. On an unknown date Sajana Babu made a statement referencing the incident on 3 October. We do not quote it in full here, but she referred to finding that she had been treated unfairly and feeling a negative energy to work in when Sylvia was around. She also referenced a previous incident on 18 September 2021 wherein she complained about the claimant being very rude to her.
82. Claire Wilson gave oral evidence about the planned induction meeting with Nazmin Ahmed on 4 October 2021. We accept the evidence of Claire Wilson that Nazmin Ahmed made a complaint about the claimant’s conduct at that meeting. We find that it was not prompted by Claire Wilson proactively in order to discover and/or manufacture allegations against the claimant.
83. In our judgment, it was inevitable that Claire Wilson would speak to Sajana Babu given the nature of the complaint by Nazmin Ahmed. To do otherwise would be a dereliction of duty by a manager. Further, it appears that Natalie Bryant became involved due to Sajana bursting into tears in the office. Consequently, we reject the claimant’s central assertion that Claire Wilson was manufacturing a case against her and find that she wasn’t.
84. Claire Wilson told us that, on their own, the allegations from colleagues about the claimant would not have warranted suspending the claimant. Her evidence was that she was going to raise this with the claimant in due course, but the events of 6 October 2021 supervened.
85. On 6 October 2021, Claire Wilson took Resident B to a hospital appointment. Again her witness statement does not deal with this in any detail, but she made a statement dated 6 October 2021. In it she states:-

“I supported B to a hospital appointment today and on the drive to L & D Hospital B asked if he could tell me something about a member of staff. B said that he needed to report that Sylvia had been verbally abusing him for about four years and that he couldn’t take it anymore. B stated that nothing was ever good enough in Sylvia’s eyes and that Sylvia would criticise him if he did not do something properly or it wasn’t

good enough for her. B said that at the weekend Sylvia had made him change his furniture around so that the lounge was set up how she wanted it and he couldn't say no to her. I asked if B had told staff before and he said he was waiting to see if he could trust me as a new manager and he needed to know if I would tell Sylvia. B said he reported to Andy, the previous manager and that after that Andy told Sylvia and she came and threatened him. B stated that Sylvia threatened him to keep his mouth shut and to not tell anyone about her or he would be in trouble. B was distressed by this and felt scared to tell anyone anything. Sylvia has also gone into his fridge in the past and eaten chocolate that B had bought for another tenant, and this was upsetting to B. B stated he felt abused, and it was painful. B said that Sylvia would come into his flat whenever it suited her and even if he wasn't having support hours from her, she would arrive and try and control what he was doing.

I talked with B about what he wanted to do next, and he said he wanted to report it. B and I completed the safeguarding portal information together and he knew he wanted to talk to a social worker about what had happened. I asked B about talking with his family, but he did not want to do this and asked that I did not inform them.

I asked B if there was anyone else, he wanted to talk to so that he could have some support throughout the process and he said Natalie Bryant - Support Worker.

I spoke with Natalie to inform her that B had raised a concern about a member of staff and asked that she support him at meetings with the team."

86. The claimant suggested that Claire Wilson's reports of 4 October and 6 October had been made up long after the events. We reject that evidence. In our judgment, these were probably file notes made at the time. The 6 October 2021 note specifically refers to "today".
87. As set out in Claire Wilson's statement, she and Resident B filled out and submitted a report on the safeguarding portal to Herts C.C. We have not seen a copy of that report – it may be that Herts C.C. Safeguarding Team cannot or will not release it.
88. On 6 October 2021, Claire Wilson took advice from Angela Duce who suggested that the claimant should be suspended.
89. Also on 6 October 2021, Claire Wilson telephoned the claimant and suspended her. It is the claimant's evidence that she was told that it was for bullying and harassment of residents and staff. In the document "Questions for Claire Wilson" she puts it as follows:-

"SC was highly distressed and became very upset during the call. I needed to give SC certain information, as advised by Angela Duce as part of advising her of the suspension. I was concerned as SC was very upset however throughout the call my tone was caring and I said that I could hear how upset she was, and I took a brief pause for her to regain her composure. I enquired if she had anybody at home who could support her, and she said she would call her daughter.... My notes are – I advised SC that she was being suspended due to a safeguarding allegation and bullying allegation and that she was suspended without prejudice pending investigation. During this time, she was not allowed to make contact with anyone else within the organisation or talk about the suspension and that she would need to make herself available during usual work hours for any meetings that may be held."

We accept that evidence from Claire Wilson.

90. In a letter dated 7 October 2021 to the claimant, the claimant's suspension was confirmed. It states:-

"Further to our telephone conversation yesterday, 6th October 2021, I am writing to confirm that in accordance with the organisation's formal disciplinary procedures, you are suspended, without prejudice, pending an investigation into allegations made against you.

Your suspension is to enable us to conduct a thorough and speedy investigation and does not itself carry any prejudgment, nor does it constitute any form of disciplinary action against you. The investigation is to consider allegations of:

- Emotional/psychological abuse of a tenant in your care;
- Bullying and intimidation of colleagues."

91. We accept Claire Wilson's evidence that Resident B, without prompting or having words put in his mouth, raised the complaint against the claimant in the terms as recorded by Claire Wilson in her file note of 6 October 2021. The reason we find this is that, in due course, the Safeguarding Team from Herts C.C. conducted a meeting with Resident B. Tamara ElAraby, an Advanced Practitioner, and Sophie Rayner, a Safeguarding Practitioner, both from Herts C.C. conducted a meeting with Resident B on 22 October 2021. Pursuant to Resident B's previously expressed wishes Natalie Bryant was in attendance to support Resident B. Claire Wilson was intended to be present but due to an emergency could not attend.

92. We have the safeguarding meeting document. The "Summary of concern (allegation)", which may reflect the portal report, states:-

"B states he is being abused verbally and shouted out by one of the employees at Harpenden Mencap Domiciliary Service. B states this is upsetting him and he is concerned that by reporting the abuse the worker will come and threaten him. He states her behaviour is painful and abusive and has been happening for about 4 years. Previous reports to the previous manager resulted in the worker threatening him."

93. The strategy meeting minutes record B's reported concerns to the safeguarding personnel. The minutes do not contain a great deal of detail of the specific allegations but do reference that it had been happening for around four years and that the claimant would "shout" when he was doing things incorrectly or unhappy with what he was doing, stating that Sylvia "wanted her own way all the time and accusing me of being rude to staff, threaten me and all that".

94. It is recorded that the outcome the Adult at Risk wanted to achieve was "Support worker to not return to work due to his level of fear."

95. Hence, there is independent corroboration of B's complaints coming from himself in the absence of Claire Wilson.

96. During the course of the meeting Natalie Bryant raised a further concern about another resident, Resident N. Claire Wilson accepted that it was inappropriate for that to be raised in front of Resident B.

97. The Safeguarding Team required the respondent to investigate the matter.

Claire Wilson was advised to make a second portal report concerning Resident N which she did. However, the second report did not cross the safeguarding threshold to require further action.

98. Issue 3.2.11 is:-

“Did CW imply the claimant was critical of other faiths and cultures on 4 October 2021, following the claimant’s suggestion about written meal plan, and twist the claimant’s actions into allegations of bullying and intimidation?”.

99. Once again, the quoted extracts from contemporaneous documentation in the list of issues are accurate save that the 25 October 2021 extract is actually from a transcript of a meeting and not a written communication.

100. However, in context, the extract from the interview with Claire Wilson on 25 October 2021 by Anthony Harris is nothing to do with being critical of other faiths and cultures. The values being referred to were making Pine Court a welcoming place for staff members and upholding values for the tenants in it.

101. Further, the extract quoted from the interview between Grant Pegg and the claimant on 29 December 2021 omits the part that comes after “breakfast” as follows – “Because I didn’t think sweetcorn and fried egg was suitable for an English person, not even me, I’ve never heard that before.”

102. The claimant’s evidence was that on 4 October 2021 she went to see Claire Wilson. It is clear to us that she was escalating an issue that had arisen on 3 October 2021. This concerned Resident S and the two agency staff. The claimant told us:-

“He looked very tearful and he had sweetcorn and eggs in front of him and I know he doesn’t like that, he likes his bacon and things. ...I mentioned it to Claire on the Monday, can we write a meal plan and explained what happened. She said that was a good idea, we will raise it in the staff meeting.”

103. When the claimant was asked why she was complaining about being criticised for a faith comment she denied it. She went on: “It was never mentioned to me, and I don’t think I have seen it in all the paperwork.”

104. This suggests to us very strongly that large parts of this case have been advanced based on Ms Yates’ analysis of the documents following disclosure and do not reflect the claimant’s actual complaints

105. The comment made by Claire Wilson referring to different cultures was in answer to a question as follows:-

“Did SC call you on 4 October 2021 to discuss a meal plan for breakfast for the agency staff and raise concerns about a breakfast given to one of the residents regarding sweetcorn and fried egg?”

106. The two agency staff were Sajana Babu and Nazmin Ahmed. We do not presume to guess their race or religion and we were not told. However, they were clearly not Black, Caribbean or African as the claimant stated she was the only black care support worker at Pine Court. However, were one or both of the

agency staff to be Asian and Muslim, we understand how issues such as cooking bacon (Resident S's preferred breakfast) could arise and, if they did, would need to be addressed at management level.

107. We do not find that Claire Wilson referencing the claimant's highlighting of the agency staff being of a different culture in the context of not giving Resident S the breakfast he wanted, was either expressly or impliedly suggesting that the claimant was critical of other faiths and cultures. Further, we find that this was not an attempt to twist the claimant's comments into allegations of bullying and intimidation.

108. Accordingly, we find the answer is 'no' and issue 3.2.11 is not proved.

109. Issue 3.2.12 is:-

“Did CW suspend the claimant on 6th October 2021 without warning”.

110. The answer is 'yes'; we find that CW did suspend the claimant on 6 October 2021 without warning.

111. We have taken as a comparator a white, younger, colleague who had similar safeguarding concerns raised against him or her. We find that such a colleague would have been treated exactly the same given the seriousness of the safeguarding concerns and the clear necessity to investigate the issue.

112. Consequently, we do not find that this was less favourable treatment.

113. Issue 3.2.13 is:-

“Did AD and/or CW fail to inform the claimant of the allegations against her in a timely fashion?”

114. As far as the quoted extracts in the list of issues are concerned, we do not have the 11 November 2021, 24 January 2022 (x 2), and 25 January 2022 communications but we assume that they are accurate. The letter inviting the claimant to an investigation meeting is dated 21 January 2022. The comment on 6 October 2021 is confirmed in the witness statement of Claire Wilson. The rest of the quoted extracts are accurate.

115. As recited above, when first suspended the claimant was informed both verbally and in writing of the general nature of the reasons for her suspension.

116. The claimant's assertion that pursuant to the Acas Code of Conduct she had the right to be informed of the allegations and given an opportunity to put her case in response is inaccurate. That is certainly the position for a disciplinary hearing but not for an investigation meeting.

117. The investigation meeting was conducted by Mr Anthony Harris (from Peninsula – a third party) on 25 January 2022. At that investigation meeting all allegations were put to the claimant and she was given an opportunity to respond.

118. As it happens, the disciplinary process did not get beyond the investigation. On 16 February 2022, the claimant was informed that her suspension was lifted on

the basis that the evidence surrounding the allegations was inconclusive. The disciplinary process was closed, albeit that the respondent elected to treat the matter as a capability issue thereafter.

119. We take an allegation of a failure to do something as importing within it an obligation to do that which it is said was not done. We find that the claimant was told in general terms what the allegations were and in detail at the investigation meeting. We do not find that Angela Duce and/or Claire Wilson were under any duty to inform the claimant of the allegations prior to when she was informed of them. Consequently, we do not find that there was a failure to inform the claimant of the allegations against her in a timely fashion.

120. Consequently, we find the answer is 'no' and issue 3.2.13 is not proved.

121. Issue 3.2.15 is:-

“Did AD or CW (or another acting on their behalf) prolong the period of suspension to give the respondent time to strengthen the allegations against the claimant.”

122. Following the claimant's suspension on 6 October 2021 she lodged a grievance on 14 October 2021.

123. On 20 October 2021, the claimant was written to and informed that the grievance was to be heard by Peninsula Face2Face.

124. Angela Duce gave evidence that in line with best practice, the investigation into the conduct of the claimant was put on hold until the grievance process had been completed. In her oral evidence Angela Duce told us she thought that the claimant had been informed of this, but we are unable to find a letter setting this out. However, we accept Angela Duce's evidence that the disciplinary investigation process was put on hold pending the determination of the claimant's grievance.

125. The claimant was interviewed for her grievance by Grant Pegg of Peninsula on 28 October 2021. The grievance report is dated 29 December 2021, and the claimant was informed that her grievances had been dismissed in a letter dated 21 January 2022. Thereafter, the disciplinary investigation process resumed, and the claimant was interviewed on 25 January 2022.

126. We find that Angela Duce and/or Claire Wilson did not prolong the period of suspension to give the respondent time to strengthen the allegations against the claimant. Clearly there was an ongoing investigation but that was to be expected. We find that the period of suspension was prolonged due to dealing with the claimant's grievance.

127. Consequently, we find the answer is 'no' and issue 3.2.15 is not proved.

128. Issue 3.2.16 is:-

“Did AD or CW fail to contact the Claimant whilst she was suspended.”

129. The list of issues quotes from three communications. The quote from a letter dated 11 November 2021 from Angela Duce to the claimant cannot be checked

as we do not have that letter in our bundle. It may be that it was in this letter that the claimant was informed that the disciplinary investigation would be put on hold whilst her grievance was investigated.

130. The claimant's suspension was lifted on 16 February 2022 and consequently the two references to communications in August 2022 and March 2023 are irrelevant.
131. Once again, we take an allegation of a failure to do something as importing into it an obligation to do that which it is alleged was not done. It was not made clear to us what contact it is alleged Angela Duce or Claire Wilson failed to undertake. Claire Wilson wrote to the claimant on 7 October 2021 confirming her suspension. Angela Duce wrote to the claimant on 20 October 2021 acknowledging her grievance. The claimant was interviewed by Grant Pegg of Peninsula on 28 October 2021. Angela Duce wrote to the claimant on 11 November 2021 (although we do not have the letter in our bundle). Angela Duce wrote to the claimant on 21 January giving her the grievance outcome and also wrote on 21 January 2022 inviting the claimant to the disciplinary investigation meeting.
132. We find that Angela Duce and Claire Wilson did not fail to contact the claimant whilst she was suspended.
133. Consequently, we find the answer is 'no' and issue 3.2.16 is not proved.
134. Issue 3.2.17 is:-

“Did AD and/or CW fail to allow the claimant the opportunity to prepare and obtain representation at meetings?”
135. On 20 October 2021 the claimant was invited to the grievance meeting giving her eight days' notice. The invitation letter states:-

“You are entitled, if you so wish, to be accompanied by a colleague or trade union official. If you wish to exercise this right then it is your responsibility to make the arrangements.”
136. At the outset of the grievance meeting the claimant was reminded that she had the right to be accompanied at the meeting and she confirmed she was happy to proceed.
137. Consequently, we find that the claimant had eight days opportunity to prepare for and obtain representation at the grievance meeting on 28 October 2021.
138. On 21 January 2021, the claimant was invited to the disciplinary investigation meeting on 25 January 2021. As already found, the claimant had no right to be represented at that meeting. We find that the claimant had four days opportunity to prepare herself for the interview.
139. The claimant did not attend any other meetings.
140. Consequently, we find the answer is 'no' and issue 3.2.17 is not proved.

141. Issue 3.2.18 is:

“Did AD tell the claimant on 13 July [should be January] 2021 [should be 2022] this is simply an investigation, there is no statutory right to be accompanied to this meeting?”

142. We do not have any document relating to 13 January 2022 and do not have the two emails referenced in the list of issues dated 25 January 2022. The claimant gives evidence about email exchanges on 24 and 25 January 2022 at paragraph 22 of her witness statement. We note that the issue has the date of 13 January 2022 but is quoting from the email on 25 January 2022.

143. We find that on 25 January 2022 Angela Duce did tell the claimant that the meeting on 25 January 2022 was simply an investigation and as such, there was no statutory right to be accompanied to the meeting.

144. Consequently, on that basis, we find the answer is ‘yes’ and issue 3.2.18 is proved.

145. We have gone on to consider whether that was less favourable treatment. We have taken as a comparator a hypothetical white/younger male or female colleague. In our judgment, such a comparator would have been treated in exactly the same way. The comment was accurate. There was no statutory or contractual right to be accompanied. Consequently, we find that this was not less favourable treatment.

146. Issue 3.2.19 is:-

“Did CW hijack the investigation meeting, deny the claimant clear and concise details of the allegations, and ask the claimant to give her account of unknown allegations?”

147. Once again, save that the first email on 7 January 2022 was to Sophie Rayner, the quoted extracts from contemporaneous documentation are accurate. They also appear to us to be wholly irrelevant.

148. The investigation meeting was held on 25 January 2022. It was conducted by Anthony Harris with the claimant. Claire Wilson was not in attendance. As such, she did not hijack the investigation meeting, deny the claimant clear and concise details of the allegations or ask the claimant to give her account of unknown allegations. Consequently, we find the answer is ‘no’ and issue 3.2.19 is not proved.

149. Issue 3.2.20 is:-

“Did CW increase the number of allegations against the claimant following her suspension.”

150. Once again, the quoted extracts from contemporaneous documentation are accurate.

151. The reference in the list of issues to Anthony Harris refers to his report dated 3 February 2022. It is correct to say that 10 headline allegations are highlighted. All but three of the allegations arose prior to the suspension on 6 October 2021.

The three allegations relating to Resident N (stool sample), Resident N (shower) and Resident D (underpants with pyjamas) appear to have arisen consequent upon Natalie Bryant's statement which is dated 26 October 2021. As such, the number of allegations against the claimant following her suspension did increase.

152. Consequently, we find the answer is 'yes' and issue 3.2.20 is proved.
153. We have gone on to consider whether that was less favourable treatment. In our judgment, the allegations emerged after Natalie Bryant was requested to write a statement for the purposes of the investigation. We have taken as a comparator a younger, white, colleague who had been suspended for safeguarding concerns and was being investigated. In our judgment, such a comparator would have been treated in exactly the same way and would have had further allegations made against him or her arising out of the investigation. Consequently, we find that this was not less favourable treatment.
154. Issue 3.2.21 is:-
- “Did CW/the respondent fail to follow a fair, independent, rigorous, transparent and competent grievance and disciplinary process, including at the disciplinary meeting on 25 January 2022?”
155. We do not have the documents from which the quotes have been taken on 24 January 2022, 8 February 2022, and 21 February 2022 but assume that they are accurate. All the remaining quotes are accurate.
156. We find that the respondent outsourced the grievance and disciplinary processes to an independent third party, namely Peninsula Face2Face.
157. As far as the disciplinary process is concerned, as already recorded, the claimant was suspended on 6 October 2021, attended an investigatory meeting on 25 January 2022 and the disciplinary process was terminated on 16 February 2022. No disciplinary action was taken against the claimant. It is clear to us that the claimant considered that she was subjected to disciplinary action and/or some form of detriment on the termination of the disciplinary process. However, in our judgment, the respondent treated the claimant under the capability policy thereafter. Under the capability process it was entirely legitimate for the respondent to treat the disciplinary report as a letter of concern to lie on her file and to impose a performance improvement plan on the claimant. The claimant may not have liked it, but it was not a disciplinary sanction.
158. We find that the suspension of the claimant was fair as it was consequent upon safeguarding concerns. We find that the investigation was independent and rigorous. The outcome was communicated to the claimant, and she was sent the Peninsula Face2Face report (as confirmed in an email dated 28 February 2022 from Ms Yates). As such it was transparent.
159. The claimant lodged her grievance on 14 October 2021. The claimant had a grievance interview on 28 October 2021 and a report was produced by Grant Pegg on 29 December 2021. The claimant's grievances were dismissed, and she was informed of this on 21 January 2022. The grievance process was independent and rigorous. The claimant was provided a copy of the Peninsula

Face2Face grievance report. As such it was transparent.

160. The claimant appealed the grievance outcome in an email dated 24 January 2022. That email was addressed to the then Head of Trustees, Rachel Jones.
161. In addition, the claimant submitted a grievance appeal to Mencap UK on 25 February 2022. Mencap UK is an entirely separate organisation.
162. In due course, the grievance appeal dated 25 February 2022 was referred to Peter Taylor, the new Chair of the Trustees. It is not known what happened to the email appeal dated 24 January 2022.
163. The claimant lodged a second grievance on 4 April 2022. We will deal with this in the next issue.
164. Peter Taylor made several attempts to arrange a grievance appeal hearing. On 13 May 2022 Christine Yates wrote to Peter Taylor on behalf of the claimant objecting to him dealing with the grievance appeal and stating:-

“For these reasons my professional advice to Sylvia is to await notification that a properly qualified, independent, credible investigator will be allocated in response to her outstanding grievance. We do not consider you to be a suitable person to undertake this investigation...”

165. Peter Taylor outsourced the grievance appeal to Peninsula Face2Face, and an appeal hearing was scheduled for 13 June 2022. On 9 June 2022 Christine Yates wrote to Peter Taylor as follows:-

“Your preference in commissioning Peninsula Face2Face is perverse and a misuse of charitable funds.

...

I have suggested Sylvia not access her computer and to focus on getting back to full health and to ignore any further communications from Harpenden Mencap for at least four weeks.

...

I will not be entering into any more correspondence with you on this matter and ask that you do not contact Sylvia until she is authorised by her GP that she is fit and fully able to return to the workplace.”

166. The grievance appeal hearing went ahead on 13 June 2022 and was held by Joseph Gill of Peninsula Face2Face. The claimant did not attend. The outcome was that the grievance appeal was dismissed. The claimant was informed in a letter dated 26 July 2022.
167. We find that the grievance appeal was independent and rigorous. The claimant was sent the grievance appeal report and, consequently, we find that it was transparent. We find that the claimant, notwithstanding her health issues, did not engage whether by herself or with Christine Yates.
168. We find that the grievance and disciplinary process was fair.

169. Consequently, we find the answer is ‘no’ and issue 3.2.21 is not proved.
170. Following the letter on 16 February 2022 the claimant went off sick on 20 February 2022. We have a Med 3 fit note dated 21 February 2022 signing her unfit for work due to “adjustment disorder – related to current work issues”.
171. On 4 April 2022, the claimant submitted a second grievance relying on a letter dated 31 March 2022.
172. Issue 3.2.22 is:-

“Did CW/the respondent fail to handle the claimant’s grievance speedily, honestly and independently between April 2022 and 12 June 2022 [we assume this should be 2023] and cause her unnecessary distress?”

173. We do not have the documents from which the quotes have been taken dated 15 February 2022, 21 February 2022, 17 May 2022 and 12 June 2022 but assume that they are accurate. Save that the last quote is from 2022 not 2023, the remaining quotes are accurate.
174. The second grievance submitted on 31 March 2022 runs to 17 pages. The introduction includes the following:-

“After being unfairly suspended in October 201, followed by a bungled disciplinary investigation/process undertaken in January 2022, the complainant was reluctantly reinstated in February 2022. The allegations for which she was suspended having been unevicenced, unreasonable, and clearly vexatious. Despite reinstatement the complainant was accused of falling short of expected standards and threatened with further disciplinary action.”

175. There are then separate sections, namely :-

- Background leading up to this complaint
- Chronology
- The grievance procedure
- The grievance appeal process
- Suspension and disciplinary process
- Disciplinary investigation process
- Suspension investigation report, allegations and rebuttal

176. This second grievance covers the handling of the first grievance and the disciplinary investigation. We find that it raises new issues that were not covered by the first grievance. The language used by Christine Yates in the document is trenchant. For example, the following is contained in it:-

“The Respondents have acted like the stereotypical “Karen” having weaponised their privilege and more powerful position against the Complainant, making up and suspending the Complainant for numerous fictitious infringements, and deflecting from

their personal misconduct. As egregiously, they encouraged Residents under their care, to do same. There is also something very sordid about the way in which white, female management have facilitated racism by colluding with white, male Residents to give a misogynistic, racist view of the black Complainant.

None of the spurious allegations stand up to proper scrutiny nor did they ever warrant suspension. The unreasonable actions and conduct of the Respondent, provides compelling evidence that the suspension was a concerted, targeted, racist campaign to get rid of the complainant and impugn her good character.”

And:

“Despite being reinstated (16 February 2022), the Complainant has a significant loss of trust and confidence in Harpenden Mencap’s current management structure. There is clearly a hostile environment for Black staff, making it unsafe for the Complainant to return to face further victimisation.”

And:

“The investigator of the grievance needs to be independent, suitably qualified, experienced, and aware of the protected characteristics of sex, race, the PSED [Public Sector Equality Duty], and employment law.

Please acknowledge receipt of this grievance and advise how you propose to have it objectively, fairly, managed.”

177. We note Christine Yates uses the slang term ‘Karen’, which is a pejorative and borderline racist, sexist and ageist term.

178. The grievance was initially sent to Mencap UK (an entirely separate organisation to the respondent).

179. Mencap UK obviously contacted Christine Yates because we have an email dated 7 April 2022 wherein she states:-

“I have been informed by Mencap (UK) that complaints have to be submitted using each independent Mencap entity’s internal complaints procedure. Please find attached four documents relating to a formal grievance against Angela Duce, CE and Claire Wilson, Support Services Manager.”

180. That was sent to Julie Caseberry, who by then was no longer the Chair of the Trustees.

181. At around this time but unbeknownst to the claimant, the safeguarding issues had been completed with Herts C.C. Safeguarding Team being content with the outcome of moving the claimant from Pine Court to Stairways so that she no longer worked with Resident B.

182. The second grievance was referred in due course to Peter Taylor, the new Chair of Trustees. On 29 April 2022 he wrote to the claimant as follows:-

“I acknowledge receipt of your letter dated 25 February 2022 in which you outlined a grievance appeal and the additional grievances that you raised in a further letter dated 31 March 2022 and your desire for these matters to be addressed through the formal grievance procedures. However, I did not receive these until 12th April 2022 as you

wrote to the wrong organisation and not to Harpenden Mencap as outlined in the appeal outcome letter sent to you on 21 January 2022.

I am therefore writing to confirm that I will hear your grievance on Tuesday 10 May 2022 at 10am.”

183. The letter then sets out the three bullet points taken from the original appeal email dated 24 January 2022.

184. On 6 May 2022 Christine Yates replied. This states:-

“Your letter dated 29 April 2022 in response to a second grievance, submitted by Sylvia Constance on 31 March 2022, is acknowledged.

...

There is something potentially underhanded about your attempt to take charge of this grievance. On 21 January 2022 Angela Duce, the Chief Executive and one of the subjects of the outstanding grievance, wrote to Sylvia Constance informing her that an appeal for her October 2021 grievance should be sent to Ms Julie Caseberry, Chair of the Trustees. This raises the question of her disappearance, your appointment, and the process leading to your appointment.

Notwithstanding this lack of transparency, you stated that you would be hearing Sylvia’s grievance on 10 May 2022, notably without having the courtesy to check her availability. It is disturbing that you do not understand the role and remit of Chair and have put yourself forward as investigating officer. There is a clear demarcation between an investigating officer, tasked with establishing fact, and the decision-maker, whose role is to act as the (independent) investigation findings. To spell it out, your role as investigator would be an unmistakable, chosen conflict of interest.

Additionally, stating that you will be hearing the 2022 grievance and the 2021 grievance appeal is neither sensible nor reasonable. ...we are not interested in a separate appeal hearing, having no trust and confidence in Harpenden Mencap, and it being meaningless at this late stage regardless.

...

For the avoidance of doubt Sylvia Constance will not be available on 10 May 2022.”

185. On 11 May 2022 Peter Taylor replied as follows:-

“Whilst it is understandable your friend has your best interests at heart, the letter of 6 May was both unhelpful to the situation and vitriolic; may I politely ask that your friend considers the tone of her rhetoric in future correspondence as it does not lend itself to resolving the matters at hand.”

Peter Taylor went on to ask for future dates for a meeting.

186. On 13 May 2022 Christine Yates replied. This includes:-

“In response to your latest attempt to coerce Sylvia into attending an investigation meeting with you, I respectfully remind you that you have neither the authority nor the right to direct a complainant to ignore independent, professional advice. Especially, when compliance with your improper demand would be considered a (further) detrimental act and not in the best interests of the charity.”

We observe that this is contrary to the respondent's grievance procedure and the Acas Code of Practice which places an onus upon an employee attending a grievance meeting.

187. The letter goes on:-

"Your continued involvement in taking total responsibility for managing this grievance shows you either do not understand the concept of "conflict of interest" or you are willfully ignoring the law. Additionally, albeit consistently, your actions demonstrate a continued failure to comply with the grievance procedure, the Acas Code, and proper practice. Your desire to take on the role of grievance investigator looks remarkably similar to doing your best to obstruct due process and prevent Sylvia getting a fair hearing.

For these reasons my professional advice to Sylvia is to await notification that a properly qualified, independent, credible investigator will be allocated in response to her outstanding grievance. We do not consider you to be a suitable person to undertake this investigation and a refusal to recuse yourself from this stage of the grievance procedure will provide compelling evidence that you are prepared to continue to breach employment law, as well as general duties Trustees are subject to under company law."

188. At the same time Christine Yates made a formal complaint to Mencap UK.

189. On 18 May 2022, Peter Taylor wrote to the claimant asking her to provide a suitable date for the grievance appeal hearing.

190. On 23 May 2022, Christine Yates emailed Peter Harris to say:-

"Please respect Sylvia's right to have her grievance, submitted 31 March 2022, heard in a timely manner.

...

Please clarify what steps you are taking in order to mitigate conflict of interest relevant to your involvement in the grievance."

191. On 24 May 2022, Peter Taylor wrote to the claimant once again requesting a convenient date for the grievance appeal hearing.

192. On 26 May 2022, the claimant replied (although it is clear to us that Christine Yates drafted it). The letter suggests that the grievance appeal has been superseded by the second grievance and complains that Peter Taylor appeared to want to subsume the grievance appeal with the outstanding second grievance. The letter suggests the grievance appeal might be dropped in order to speed things up and reiterates that the claimant wanted the grievance dealt with properly, professionally and independently.

193. It is clear that Peter Taylor decided to outsource the grievance appeal because the claimant was written to on 6 June 2022 by him indicating that the appeal would be heard by Peninsula's Face2Face service on 13 June 2022.

194. On 9 June 2022, Christine Yates replied as follows:-

"Further to your letter of 6 June 2022 please refer to Sylvia's letter dated 26 May 2022

in which she requested that her outstanding grievance be independently managed.

...

For the avoidance of doubt, we have repeatedly asked that the grievance be passed to Mencap UK who are trusted to be suitably qualified and independent.

...

Your preference in commissioning Peninsula Face2Face is perverse and a misuse of charitable funds.

...

I have suggested Sylvia not access her computer and to focus on getting back to full health and to ignore any future communications from Harpenden Mencap for at least four weeks. We will review the situation after this time with advice and guidance from Sylvia's GP.

I will not be entering into any more correspondence with you on this matter and ask that you do not contact Sylvia until she is authorised by her GP that she is fit and fully able to return to the workplace."

195. The email with the letter of 9 June attached to it alleges that Peter Taylor is not a fit and proper person to be a trustee.
196. On 10 June, Peter Taylor wrote to the claimant indicating that the grievance appeal hearing was going ahead on 13 June 2022.
197. Joseph Gill of Peninsula Face2Face held the meeting on 13 June 2022 and the grievance appeal was dismissed.
198. In a letter dated 26 July 2022 Peter Taylor informed the claimant that her grievance appeal had been dismissed. The Peninsula report was attached.
199. In Appendix 1 to the Peninsula Face2Face report of Joseph Gill (which sets out Angela Duce's replies to his questions), the following is recorded:

"3. Sylvia has noted that your letter dated 29th April 2022 referenced both a grievance and a grievance appeal. Was it the intention that both would be heard together, or merely typographical mistakes within the letter?

It was felt that the further grievances formed part of the appeal against the original grievance and it was the intention to initially hear them together. If further investigation was required this would have been instigated. However, Sylvia would not agree to attend a meeting with Peter Taylor, Chair of Harpenden Mencap (Julia Caseberry stepped down as Chair at the AGM on 22 February and Peter was subsequently appointed by the members). Despite this, Christine Yates asked Peter to hear it within a reasonable timescale, but again failed to either provide dates or attend any of the meetings arranged, therefore there has never been any opportunity to address the ongoing complaints nor the outcome of the disciplinary investigation."

200. On 3 August 2022, Claire Wilson wrote to the claimant inviting her to an informal welfare meeting as she had been on sick leave since 21 February 2022. The

claimant's contractual and statutory sick pay was scheduled to finish in August 2022.

201. On 5 August 2022, Christine Yates replied asserting that the cause of the claimant's absence was due to Claire Wilson and her colleagues' directly targeted racist campaign and asserting that she was not qualified to hold an informal welfare meeting with the claimant. A request was made for the claimant to be referred to an independent qualified Occupational Health Service.
202. In evidence, Angela Duce told us that the respondent's process for managing long-term sickness absence was to hold a welfare meeting before an OH referral to gain an understanding of when the individual was likely to return to work and what supportive measures may be required.
203. On 27 February 2023, the claimant was written to by Kate Bell, who had recently joined the respondent as Head of Finance and Operations and who had not been involved hitherto. The letter was to invite the claimant to an informal welfare meeting. This was scheduled for 9 March 2023.
204. The meeting did not take place on 9 March 2023 and at 6.51pm on 9 March 2023 the claimant emailed Kate Bell (email probably drafted by Christine Yates) as follows:-

“In respect of arrangements to ensure my safety once I return to the workplace, until my grievance submitted 4th April 2022 is heard, I am left in limbo in respect of knowing what to expect when returning to the workplace. Failure to address my grievance indicates that serious complaints of harassment, discrimination, and victimisation are not being taken seriously, leaving me extremely anxious and unable to have a reasonable discussion about my safety and protection from further discrimination and unfair treatment. Having failed to keep in regular contact for all this time does not lead me to believe that HM is acting in good faith.”

205. On 10 March 2023, Kate Bell rescheduled the meeting by Teams for 16 March 2023.
206. On 13 March 2023, the claimant replied seeking clarification of Kate Bell's involvement and stating:-

“Please also inform me what is happening with my outstanding grievance and how it is being handled.”

207. We have an undated email from Kate Bell in response which includes the following:-

“I am not privy to your outstanding grievance, however if this is relevant to your continued absence I am more than happy to discuss this with you so I can chase up a resolution.”

208. On 15 March 2023, the claimant emailed Kate Bell objecting to a welfare and absence review meeting in isolation, stating it was inappropriate for her to be involved, referencing her employment tribunal proceedings and stating:-

“Until my outstanding grievance has been heard according to the companies internal grievance procedure, there is unlikely to be any premature resolution.”

209. The claimant did not attend the rearranged meeting on 16 March 2023.

210. On 30 March 2023, Kate Bell emailed the claimant stating:-

“You mention a resolution relies on your outstanding grievance being heard in accordance with the companies procedure and, to avoid any further delay, I would appreciate if you could confirm the following:

- The date you sent through your outstanding grievance and who it was sent to;
- who you would be suitable to chair the grievance hearing; and
- what dates you are available to attend the hearing.”

211. On 17 April 2023, Christine Yates emailed Kate Bell. She references the second grievance having been submitted over a year previously and states:-

“It is highly improbable that having failed to follow any proper process for all this time, not least failing to keep in contact with Sylvia for the months she was suspended, then following her long-term sickness absence, any attempt on your part to “manage” Sylvia’s absence is a flimsy, superficial pretence of goodwill, an attempt we do not believe is sincere. Sylvia has no cause to have trust and confidence in the charity’s leadership, management, your fitness to resolve this matter being sadly tainted by prior, current mishandling, and ongoing institutional discrimination.”

212. On 5 May 2023, Kate Bell replied stating the following:-

“I understand the grievances and appeal were all concluded with the support of an impartial third party organisation and Harpenden Mencap consider these matters to be closed; we have considered our position carefully and unfortunately it is not our intention to revisit such matters.”

Kate Bell went on to propose a Teams meeting with the claimant on 16 May 2023.

213. Kate Bell was therefore not entirely accurate when saying that the second grievance had been dealt with. The respondent’s position appears to have been in actual fact that the second grievance could not have been dealt with due to the claimant’s failure or inability to attend a grievance meeting. As set out in the letter of 9 June 2022 the claimant was going to ignore any communication from the respondent and did not want any contact until authorised by her GP as fit and able to return to the workplace.

214. On 10 May Christine Yates replied on behalf of the claimant. She asserts that Kate Bell is mistaken in respect of the outstanding grievance dated 31 March 2022 having been concluded, which is correct. The email concludes:-

“The claimant is not well enough to attend your proposed meeting on 16th May 2023. Honest acknowledgement and responses to the above might go some way to restoring trust and confidence, which to date is understandably, justifiably low.”

215. In an undated email but which was probably sent on 13 June 2023, the claimant’s contract of employment was terminated. The letter states:-

“Unfortunately we do not currently have, nor can we reasonably source, the expertise

required to satisfy your demands for a “suitably qualified” candidate to investigate your complaint of 31st March 2022.

...

Whilst we would have liked to have had a meeting to discuss this all in a reasonable fashion, it is evident through a lack of any meaningful engagement over such a long spell of time, it would not be cynical to conclude the chances of having a meeting were always slim to none. Moreover, any suggestion the relationship is perhaps recoverable would appear insincere in the circumstances. It is with deep regret that I feel we have no other option but to conclude an irrevocable breakdown in the relationship between Harpenden Mencap and yourself has occurred. For the avoidance of doubt your employment will terminate by way of some other substantial reason (SOSR) effective 13th June 2023.”

216. The letter set out a right of appeal. The claimant did not appeal.

217. Turning to issue 3.2.22, it is a fact that the claimant’s grievance dated 4 April 2022 was not dealt with in the sense of being concluded by 12 June 2023. Attempts had been made to set up a grievance meeting and the claimant had repeatedly refused to attend. In addition, the claimant was vehemently opposing the grievance being dealt with either internally by the respondent or by Peninsula Face2Face. We find that the delay in hearing the second grievance was due to the claimant’s inability, for whatever reason, to attend a grievance meeting. As such, we find there was no failure to deal with the grievance speedily.

218. We find that the claimant’s grievance was dealt with honestly in the sense that the respondent attempted to set up a grievance meeting. We find that, given the respondent had outsourced the first grievance and first grievance appeal to an independent third party, so it must be highly likely that, had the second grievance progressed, it would have been outsourced to an independent third party as well. Finally, we find that the handling of the second grievance did not cause the claimant unnecessary distress. She may well have been distressed but it was the inevitable outcome of endeavouring to deal with her second grievance.

219. Consequently, we find the answer is ‘no’ and issue 3.2.22 is not proved.

220. Issue 3.2.23 is:

“Did CW/the respondent deny the claimant’s request to be given time to concentrate on getting back to full health?”

221. Once again, the quoted extracts from contemporaneous documents in the list of issues are accurate. The context of the quotes relied upon suggests that this relates to hearing the grievance appeal on 13 June 2022 in the absence of the claimant. It is correct to state that she had referenced focusing on getting back to full health and ignoring further communications from Harpenden Mencap for at least four weeks. Notwithstanding that communication, there was no direct request that the grievance appeal hearing be postponed to allow the claimant to regain full health. In the circumstances, we consider it reasonable for the respondent to have gone ahead with the grievance appeal hearing given the fact that there was no realistic prospect of the claimant being in a position to attend in the foreseeable future. In addition, it was always possible for Christine Yates

to have attended on her behalf given her involvement in the case.

222. The second context of this complaint relates to, presumably, wanting to delay any decision to dismiss the claimant until later than June 2023. By June 2023, the claimant had been absent sick for over 15 months and had declined to attend at least three informal welfare meetings to discuss her return to work. When dealing with long term ill health absence, best practice is to consult with the employee and conduct a thorough medical investigation in order to consider whether the employer can be expected to wait any longer for the employee to return. We find that that is exactly what the respondent was endeavouring to do as well as trying to deal with her grievance appeal. The claimant was allowed 15 plus months to concentrate on getting back to full health.

223. We find that there was no failure to provide the claimant time to concentrate on getting back to full health.

224. Consequently, we find the answer is 'no' and issue 3.2.23 is not proved.

225. Issue 3.2.24 is:

“Did PT display a propensity to throw his weight around?”

226. Once again, the cited extracts from contemporaneous documents in the list of issues are accurate.

227. Having reviewed all the correspondence from Peter Taylor we have concluded and find that it was entirely reasonable, temperate and appropriate. We do not find that Peter Taylor threw his weight around. If anyone was throwing their weight around it was Christine Yates.

228. Consequently, we find the answer is 'no' and issue 3.2.24 is not proved.

229. Having reviewed all the specific allegations we have gone back to make an assessment of the general ones contained in the following:

3.2.1 : “Was the manager, Ms Claire Wilson (CW), cold and non-responsive to friendly, courteous interactions with the claimant.

3.2.2: “Did Ms Wilson have a longstanding history of making false allegations to discredit the Claimant and show personal dislike and be critical of the Claimant behind the scenes?”

3.2.3: “In addition to the factors listed in 3.2.2. , did Ms Wilson make false allegations to discredit the Claimant, namely that:

- the Claimant regularly disagreed with the rota;
- the claimant changed the rota;

3.2.14: “By virtue of the complaints against the claimant, target a racist campaign against her?”

230. Issue 3.2.1 is:

“Was the manager, Ms Claire Wilson (CW), cold and non-responsive to friendly, courteous interactions with the claimant.”

231. Whilst this is a general allegation, in the list of issues it relies upon nine allegations. Dealing with each in turn:

231.1 We have found that on 28 June 2021 CW said to the claimant that she had blinkers on or words to that effect.

231.2 We have found that on 6 October 2021 CW did submit a safeguarding concern to Herts CC regarding the claimant’s alleged conduct with a resident. This was not on 4 October 2022. We find that this was not an unspecified safeguarding concern. We find that this was in accordance with the respondent’s legal obligations.

231.3 We have found that on 6 October 2021 CW did suspend the claimant without warning. We have found that this was justified.

231.4 We have found that’s sometime after suspension on 6 October 2021 CW did request written statements from Natalie Bryant, Sajana Babu and Nasmin Ahmed. We do not find that these were obtained to support suspension. We find they were obtained in order to investigate the matter.

231.5 As a matter of fact, Claire Wilson did write to Grant Pegg the five quoted extracts from the 15 December 2021 document, and we so find. We are not sure why these comments have been relied upon as they were made in the context of investigating the claimant’s grievance and not in response to direct interaction with the claimant. In any event, we find that all the comments were justified and do not evidence Claire Wilson being cold and non-responsive. The last comment we find was not false. We have found that there were communication issues between the claimant and Claire Wilson but not such that it resulted in Claire Wilson being cold and unresponsive.

232. We find that the actions and comments of Claire Wilson were entirely reasonable and appropriate. We find that they are not evidence of her being cold and non-responsive to interactions with the claimant. Consequently, the answer is ‘no’ and issue 3.2.1 is not proved.

233. Issue 3.2.2 is:

“Did Ms Wilson have a long-standing history of making false allegations to discredit the claimant and show personal dislike and be critical of the claimant behind the scenes?”

234. And issue 3.2.3 is:

“In addition to the factors listed in 3.2.2, did Ms Wilson make false allegations to discredit the claimant, namely that:

- The claimant regularly disagreed with the rota;
- The claimant changed the rota;”

235. Eight allegations are made, with allegation two containing subsidiary allegations (i) – (xix).
236. The safeguarding meeting notes record Natalie Bryant saying to Tamara El Araby and Sophie Rayner of HCC Safeguarding, “One incident with B that we have discussed, and another being with another resident.” We find that Natalie Bryant was not standing in for Claire Wilson but was attending at the request of Resident B. We find that Natalie Bryant was raising a further alleged safeguarding issue against the claimant. We find that that was not on the instruction or with the approval of Claire Wilson. We find that it was not a false allegation.
237. The second allegation contains quotes from an interview between Anthony Harris, Peninsula Face2Face consultant, and Claire Wilson held on 25 October 2021. The parts quoted are all accurate, albeit that some are incomplete. Items (x) and (xiv) are identical.
238. The first point is that these are Claire Wilson’s responses to an investigation into the claimant’s conduct.
239. Claire Wilson’s allegations in (i),(iii),(iv),(x),(xi),(xii),(xiii),(xiv) and (xix) arise out of complaints about the claimant made to Claire Wilson by Natalie Bryant, Sajana Babu and Nazmin Ahmed. We have found that those were genuine complaints and were not prompted by Claire Wilson. As such, we find those allegations were made by Claire Wilson because they, in turn, had come to her as the line manager of a number of individuals who had made complaints about the claimant. We find that they were not false allegations and, in any event, were not made to discredit the claimant, show personal dislike and be critical of her but as a response to the grievance that had been raised against Claire Wilson.
240. Items (v),(vi),(vii) and (viii) arise out of the complaints of Resident B which we have found were genuinely made and not prompted by Claire Wilson. As such, we find that those were not false allegations.
241. Items (xvi) and (xvii) apparently arise out of the claimant’s employment file. Whilst we have not seen it, Claire Wilson refers to having the note during the course of the interview and we find that those were not false allegations.
242. Items (ii),(ix),(xv) and (xviii) are Claire Wilson commenting on how the claimant was at work. She reports two instances of the claimant shouting, the claimant working for her own agenda and the difficulties of new staff adapting to working with how the claimant worked. We find that these events probably happened, and that Claire Wilson’s comments were fair and reasonable. We find that they were not false allegations.
243. Allegations 3,4,5 and 6 relate to Natalie Bryant’s statement. We find that this was not made under the instruction of Claire Wilson and was not false.
244. Allegation 7 relates to Claire Wilson answering a query from Sophie Rayner about the concerns raised by Natalie Bryant at the safeguarding meeting about another resident. The respondent was duty bound to investigate the issue. We find that this was not a false allegation.

245. Allegation 8 relates back to the discovery by Claire Wilson that previous concerns raised by Resident B had not been acted on properly by the manager. We find that these were not unfounded issues.
246. We find that Claire Wilson did not have a history of making false allegations to discredit the claimant. We find that Claire Wilson did not show personal dislike of the claimant. We find that Claire Wilson may well have been critical of the claimant but that was in the context of managing her and investigating legitimate allegations. Consequently the answer is 'no' and issue 3.2.2 is not proved.
247. As regards issue 3.2.3, the quoted extract from the email dated 8 December 2021 from Angela Duce to Grant Pegg is accurate. We reject the suggestion that Angela Duce wrote it at the behest of Claire Wilson. We find that it was Angela Duce reflecting genuine concerns that some members of staff, including the claimant, were altering rotas to suit themselves.
248. The next four quoted extracts came from the transcript of Anthony Harris' interview with Claire Wilson on 25 October 2021. The reference to 25 January 2022 is presumably taken from the date of Anthony Harris' report. We find that the claimant probably did alter the rota to suit herself and her perceived view of what residents needed and disregarded changes to the rota that did not suit her. As such we find that these were not false allegations. Consequently, the answer is 'no' and issue 3.2.3 is not proved.
249. Having considered all the facts in this case in our judgment there is no suggestion that any of the actions of Claire Wilson were prompted by a racist sentiment. We find that the complaints levelled against the claimant were legitimate and did not constitute a targeted racist campaign against her. Consequently, we find issue 3.2.14 not proved. It was noteworthy that in her oral evidence when this was challenged, the claimant stated that she had never made that assertion. It would appear that this emanated from Christine Yates.
250. Issue 3.2.25 is:
- “The claimant’s dismissal on 13 June 2023”
251. The claimant was dismissed on 13 June 2023. Accordingly, issue 3.2.25 is proved.
252. We have gone on to consider the victimisation claim.
253. We find that the claimant did complain of being discriminated against because of her race and age in her grievances dated 14 October 2021 and 31 March 2022 (sent 4 April 2022). Further, the claimant presented her first claim to the Employment Tribunal on 15 June 2022. We find that they were both protected acts.
254. The treatment alleged in 3.2.4, 3.2.6, 3.2.8, 3.2.12, 3.2.18, 3.2.20 and 3.2.25 has been proved.
255. We find the alleged victimisation arose in prohibited circumstances covered by the Equality Act 2010.

256. We find that treatment 3.2.4 was not a detriment. It was a fair comment on a staffing issue. We find that any belief by the claimant that it changed her position for the worse or put her at a disadvantage is unreasonable and she has an unjustified sense of grievance about this.
257. We find that treatment 3.2.8 was not a detriment. It was a statement of fact. We find that any belief by the claimant that it changed her position for the worse or put her at a disadvantage is unreasonable and she has an unjustified sense of grievance about this.
258. We find that treatments 3.2.6, 3.2.12, 3.2.18 and 3.2.20 were detriments. We find the claimant had reasonably considered that they damaged her position for the worse or put her at a disadvantage.
259. We have considered whether the detriment proved was 'because of' the claimant doing the protected acts. We have posed ourselves the question 'what, consciously or unconsciously, motivated the respondent to subject the claimant to the detriment?'
260. We find that detriments 3.2.6 and 3.2.12 cannot have been because of the protected acts as they pre-date them.
261. We find that detriment 3.2.18 was not because of the protected act. We find that it was because there was no statutory or contractual right to be accompanied.
262. We find detriment 3.2.20 was not because of the protected act. We find that it was because the investigation into the claimant uncovered further potential misconduct.
263. We find that the reason for dismissal was some other substantial reason, namely the irrevocable breakdown in working relations. There was no realistic prospect of the claimant engaging with the respondent and returning to the workplace. We find that the respondent genuinely believed in that reason. The belief was neither whimsical nor capricious.
264. The disciplinary process had been concluded by 16 February 2022. The claimant's first grievance and grievance appeal had been dealt with by 26 July 2022. The second grievance had not been dealt with, but we have found that that was for good reasons, namely the inability for whatever reason of the claimant to attend a grievance meeting and the vehement objections to the respondent dealing with the grievance either internally or through the third party Peninsula Face2Face. Further, we find that the claimant did not attend informal welfare meetings in order to manage her return to work. In all the circumstances, in our judgment, the conclusion by the respondent that the working relationship between the claimant and the respondent had irretrievably broken down was a reasonable one well within the range of reasonable responses of a reasonable employer.
265. We find that the dismissal of the claimant was not less favourable treatment. We find that a younger, white comparator would have been treated in exactly the same way.

266. We find that dismissal was a detriment.
267. We find that dismissal was not because the claimant had done protected acts. We find that it was because the working relationship had irrevocably broken down.
268. We find that the claimant's dismissal was fair in all the circumstances.
269. Due to our findings, we do not need to deal with the time issues.
270. For the above reasons, the claimant's claims are all dismissed.

Approved by:

Employment Judge Allott

Date: 18 June 2025

JUDGMENT SENT TO THE PARTIES ON

18 June 2025

FOR THE TRIBUNAL OFFICE

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

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

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