



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100564/2024

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Held in Glasgow on 3, 4, 5, 6 and 7 February and on 10 April 2025

**Employment Judge C McManus
Members I Ashraf & W Muir**

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Ms S Cherry

**Claimant
In Person**

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Glasgow City Council

**Respondent
Represented by:
Mr R Bradley -
Advocate**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that:

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1. The claimant's claim of direct discrimination under section 13 of the Equality Act 2010 is not well founded and is dismissed.
2. The claimant's claims of harassment under section 26 of the Equality Act 2010 related to her protected characteristics of (1) race and (2) religion are not well founded and are dismissed.
3. The claimant's claim of victimisation under section 27 of the Equality Act 2010 is not well founded and is dismissed.

REASONS

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Background

1. The complaints were unclear from the ET1, which had been completed by the claimant as a litigant in person (unrepresented party). As set out in the Note issued following the Case Management Preliminary Hearing ('CMPH') on 3

June 2024 (now referred to as 'the Note'), at that CMPH it was identified that the claimant sought to rely on the Equality Act 2010 ('EqA'), and her protected characteristics of:

- a. Race (being her national origin/colour) (Asian origin); and
- b. Religion (Islam)

2. The legislative basis of the complaints were identified, as set out in the Note, as:

- a. Section 13 EqA (direct discrimination on the grounds of the claimant's race);
- b. Section 26 EqA (harassment on the grounds of the claimant's race);
- c. Section 26 EqA (harassment on the grounds of the claimant's religion); and
- d. Section 27 EqA (victimisation, reliant on alleged protected act of a complaint raised by the claimant in 2018).

3. The claimant additionally sought to rely on the public sector equality duty (EqA section 149). It was explained to the claimant that in terms of section 156 EqA, that duty cannot be relied upon by the claimant in these proceedings.

4. At the CMPH, steps were taken to identify both the factual and statutory basis of the claimant's complaints. The allegations on which the complaints are based were set out in the Note and identified in the draft List of Issues which was attached as Appendix A to that Note. As set out in the Note, and discussed with parties throughout these proceedings, the Tribunal sought to deal with these proceedings in furtherance of the overriding objective, now set out in Rule 3 of the Employment Tribunal Procedure Rules 2024. Also as set out in that Note, these proceedings were dealt with taking into account guidance in the Equal Treatment Bench Book, in particular Chapter 1 re litigants in person and Chapter 8 re racism and cultural differences.

5. In respect of steps taken in recognition of the claimant being a litigant in person, explanations of the procedure were given at the CMPH and throughout the Final Hearing ('FH'). As set out in the CMPH Note, steps were taken to ascertain the factual and statutory basis of the claimant's complaints and the claimant was given the opportunity to set out any other matter which she sought to rely on. Relevant legislation was set out in that CMPH Note, including in respect of time bar. Information was given on possible sources of no cost legal advice. There was guidance given throughout the FH to seek to ensure the evidence heard was relevant to the issues to be determined. Those issues were discussed in detail at the commencement of the FH and clarified during the FH. At the FH, additional questions were asked of the claimant by the Tribunal during her evidence in chief. The claimant was given the opportunity to give her evidence on matters relevant to the issues to be determined by the Tribunal. The claimant was told that any matter which she intended to rely on in her evidence should be put to the respondent's relevant witness(es) in cross examination questions, so that that witness had the opportunity to give their evidence on that matter. The claimant was re-called to give her evidence on specified matters which arose during her questioning of some of the respondent's witnesses, which the claimant had not previously given her evidence on. The claimant was referred to guidance available on line from the Equality and Human Rights Commission and Citizens Advice Bureaux. Where considered to be appropriate, the Tribunal put additional questions to the claimant during her evidence in chief and to the respondent's witnesses during cross examination. When showing signs of upset, the claimant was asked if she was able to continue to properly engage in the proceedings and she confirmed that she was. Additional breaks were taken. When the FH was not concluded in the scheduled dates, a Note of Proceedings was issued. That Note of Proceedings included information on the relevant law, the burden of proof, and the agreed procedure which would follow, including in respect of submissions. Attached as Appendix A to that Note of Proceedings was the revised List of issues, reflecting the changes to the issues discussed during the proceedings, shown as tracked changes. The respondent's representative helpfully offered to provide to the claimant, by the

date suggested by her, his written submissions and authorities relied on. These were provided by 6 March 2025, so that the claimant had the opportunity to consider these before the final date of the continued proceedings. In his written submissions, the respondent's representative
5 recognised that steps had been taken by the Tribunal to seek to "... *maintain a balance between assisting and understanding what the litigant in person requires, while protecting their represented opponent against the challenges that can be caused by [their] lack of legal and procedural knowledge.*" (Judicial College Equal Treatment Bench Book, July 2024 paragraph 20). It was the
10 respondent's representative's position that the Tribunal maintained that balance in these proceedings.

6. The claimant relies on her protected characteristics of race and religion, being her Asian origin and Islam faith. In summary, it was the claimant's position that, following having raised a grievance in 2018, the claimant was moved
15 work location in 2020, to a place where she was '*set up to fail*'. The claimant's position was that that relocation, and certain events alleged to have taken place thereafter, were acts of unlawful discrimination and harassment of her on the grounds of her race and / or religion. The claimant's position was that the respondent discriminates against anyone who is not, in the claimant's
20 words, '*white Scottish*'. The claimant relies in particular on having been unlawfully discriminated against by 13 named individuals who are or were employees of the respondent.

7. At the commencement of the FH, it was confirmed that the respondent does not rely on the statutory defence i.e. that it took all reasonable steps to avoid
25 unlawful acts by its employees. It was the respondent's position that the events relied upon by the claimant did not occur as alleged by her. This case therefore turned on the Tribunal's findings in fact. The findings in fact were made on the basis of the evidence heard, taking into account the credibility and reliability of the claimant and the witnesses and the documentary
30 evidence relied upon at the FH.

Proceedings

8. A Joint Bundle was prepared for this Final Hearing ('FH'). This Joint Bundle ('JB') contained 50 documents, in 159 pages. Documents are referred to in this Judgment by their page number (JB1 – JB159).
- 5 9. All evidence was heard on oath or affirmation. Evidence was heard from the claimant, who called no other witness. For the respondent, evidence was heard from:
- Laurana Kay;
 - Saj Ahmed;
 - 10 • Anne O'Reilly;
 - Chloe Richardson;
 - Eilidh Benson;
 - Catherine Finnigan;
 - Geraline Dolan;
 - 15 • Angela Ferguson;
 - Janet Keller;
 - Deanna Lee-Malone;
 - Christina Taylor (also known as Tina Bell);
 - Heather Douglas; and
 - 20 • Kirstie Kachkach.
10. The FH was not concluded in the originally scheduled dates. It was scheduled to continue, and conclude, on 3 April 2025. The Note of Proceedings was issued after the conclusion of the originally scheduled dates. The date for the continued FH was re-arranged, at the respondent's request, to ensure that
- 25 the date did not fall within the Eid festival.

11. The FH continued on 10 April, when evidence was heard from Kirstie KachKach. The respondent's final witness had not responded to a Witness Order. Oral judgment was delivered following the Tribunal's deliberations on 10 April. The claimant later requested written reasons and was informed that these would be produced following EJ McManus' return to the office after a period of non-working time. These written reasons are an extension of the decision given orally on 10 April 2025.

Issues

12. The issues determined are those in the List of Issues now attached as Appendix A to this decision. This is an untracked version of the revised List of Issues which was sent to parties with the Note of Proceedings in February 2025.

Relevant Law

13. The relevant law is:-
- 15 Equality Act 2010 ('EqA'):-

Direct Discrimination - section 13

- (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.'

20 **Harassment - section 26**

- '(1) a person (A) harasses another (B) if -
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
- (b) the conduct has the purpose or effect of –
- 25 (i) violating A's dignity, or
- (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.....

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

(a) *the perception of B;*

(b) *the other circumstances of the case;*

5 (c) *whether it is reasonable for the conduct to have that effect.....*

Victimisation - section 27

'(1) *A person (A) victimises another person (B) if A subjects B to a detriment because - -*

(a) *A does a protected act, or*

10 (b) *A believes that A has done or may do a protected act.*

(2) *Each of the following is a protected act –*

(a) *bringing proceedings under this Act;*

15 (b) *giving evidence or information in connection with proceedings under this Act;*

(c) *doing any other thing for the purposes of or in connection with this Act;*

(d) *making an allegation (whether or not express) that he or another person has contravened this Act.....*

20 ***Time bar - section 123***

(1) *[Subject to [section] 140B]] proceedings on a complaint within section 120 may not be brought after the end of—*

(a) *the period of 3 months starting with the date of the act to which the complaint relates, or*

- (b) *such other period as the employment tribunal thinks just and equitable.*
- (2) *Proceedings may not be brought in reliance on section 121(1) after the end of—*
- 5 (a) *the period of 6 months starting with the date of the act to which the proceedings relate, or*
- (b) *such other period as the employment tribunal thinks just and equitable.*
- (3) *For the purposes of this section—*
- 10 (a) *conduct extending over a period is to be treated as done at the end of the period;*
- (b) *failure to do something is to be treated as occurring when the person in question decided on it.*
- (4) *In the absence of evidence to the contrary, a person (P) is to be taken*
- 15 *to decide on failure to do something—*
- (a) *when P does an act inconsistent with doing it, or*
- (b) *if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.*

Burden of Proof - section 136

- 20 (1) *This section applies to any proceedings relating to a contravention of this Act.*
- (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred.*
- 25 (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.....*

The standard of proof is on the balance of probabilities. The initial burden of proof lies with the claimant to demonstrate her case and prove facts from which, absent a reasonable explanation, the Tribunal can conclude discrimination has occurred. If the claimant was able to show on the face of it that there has been treatment that could amount to discrimination, then the burden of proof would shift to the respondent. At that stage, the respondent must prove on the balance of probabilities that its treatment of the claimant was in no sense because of her relied on protected characteristic.

Code of Practice

In determining the claims under the Equality Act 2010, the Tribunal had regard to the Equality and Human Rights Commissions Code of Practice on Employment ('the EHRC') (2011).

Equal Treatment Benchbook

The Tribunal took into account the relevant guidance in Equal Treatment Benchbook (updated February 2021), in particular Chapter 1 re litigants in person and Chapter 8 re racism and cultural differences. The Tribunal had regard in particular to paragraphs 290 – 292 of Chapter 8.

Findings in fact

14. The determination of the issues did not require findings in fact to be made in respect of all evidence heard. The following material facts, and those set out in the 'Comments on Evidence' section, were admitted, non-contested or found by the Tribunal to be proven:-

15. The respondent is a local authority employing approx. 28,000 employees. The claimant is of Asian origin (Malayan) and practices Islam. At the time these proceedings mainly relate to, the claimant was employed by the respondent as a Child Development Officer, based in Kelvin Park Early Years Nursery.

16. In 2018, while employed by the respondent at Renfrew Street Nursery, the claimant raised with her then manager concerns that she was being

discriminated against by another employee. That manager met with the claimant and the situation was then considered by the claimant and the respondent to be resolved. In her email of 5 October 2021 (JB66) the claimant referred to that matter, stating “*during a meeting we thought we had resolved*”.

17. Some of the nurseries operated by the respondent are open all year round, while others operate aligned with the respondent's school terms: nurseries' operating times are either "*term time*" or 52 weeks. In 2017, on commencement of her employment with the respondent, the claimant worked as a Child Development Officer ('CDO') at the respondent's Renfrew Street nursery, on a 52 week contract. During her employment there, Renfrew Street nursery operated at times as a 'term time' nursery, and at other times as a 52 week nursery. These operational changes were made to meet service requirements. When that nursery was closed during school holidays, the claimant was deployed to other nurseries. In 2021, steps were taken by the respondent to seek to align employees' contracted hours with the operating times of nurseries. At that time, the claimant's contractual hours did not align with the operating hours of Renfrew Street Nursery. For that reason, as part of that alignment process, the claimant was moved to Kelvin Park Early Years Centre ('Kelvin Park'). The distance between these two nurseries is approximately 3 miles. The claimant was in contact with her trade union representative (Lauranna Kay) about that change. Lauranne Kay worked at Kelvin Park, where her duties included those as Trade Union Representative and Health and Safety Representative. Lauranna Kay required to have discussions with the management team at Kelvin Park in the course of her duties as Trade Union Representative and Health and Safety Representative. After the claimant relocated to Kelvin Park, the claimant accused Lauranna Kay of being '*in with management*'. Lauranna Kay was upset by that accusation.
18. At Kelvin Park 1/3 of the employees present as other than white Scottish. Approximately 30% of the employees and 55% of the children are known to be Muslim. All religious festivals are recognised and celebrated as part of the children's education.

19. While working for the respondent, the claimant commenced a BA in Childhood Practice. In September 2021, the claimant sent an email to then Head of Kelvin Park, Anne O'Reilly, asking for support (JB62 – JB63). That included seeking access to her student email account and other material for her university work. The claimant requested that access within 7 days. The claimant did then get the requested email access. In that email, the claimant also raised that 'issues of conflict' had arisen between herself and another member of staff.
20. Ensuring that the dietary requirements of children in their care are met is a crucial requirement for the respondent. This is the case whether the dietary requirements are because of religious reasons, parents' /guardians' personal preference or for medical reasons. Serious consequences can ensue if a child is allowed to have something which they are allergic to. The respondent has systems in place to ensure that children's dietary requirements are met. This includes an allergen protocol. This includes a folder being available close to each dining table which contains a photograph of the children and a note of their particular requirements. In addition to kitchen systems, it is the ultimate responsibility of the responsible CDO to ensure that the dietary requirements of children in their care are met.
21. In August 2022, Saj Ahmed (CDO) raised concerns with Catherine Finnigan that the claimant was not following proper procedures to ensure that the dietary requirements of children in her care were met. That concern was specifically in respect of Saj Ahmed's intervention to ensure that a particular child did not ingest non-Halal meat. Catherine Finnigan spoke to the claimant about that matter. The claimant considered that Saj Ahmed should not have directed her to the folder containing information on children's dietary requirements. In that discussion, Catherine Finnigan discussed with the claimant that the claimant may have to change her communication style '*depending on her audience*'. The claimant's position to Catherine Finnigan was that '*everyone is against me*' and that that was because she '*spoke with confidence*'.

22. The claimant was frequently late for work at Kelvin Park, mainly because of issues with her pets. That caused issues for the respondent in respect of appropriate staff covers, particularly taking into account required staff: child ratios. The claimant was spoken to by management in respect of her lateness for work. In summer 2022 the then Acting Depute Head at Kelvin Park (Catherine Finnigan) was on bereavement leave. Shortly after her return to work, she was late arriving for work. The claimant raised Catherine Finnigan's timekeeping with then Temporary Manager at Kelvin Park, Angela Ferguson. Catherine Finnigan tried to speak to the claimant about this. Catherine Finnigan was upset that the claimant did not appear to have recognised her personal circumstances. Later the same day, Catherine Finnigan again tried to speak with the claimant to explain her upset earlier that day. Catherine Finnigan said to the claimant that she wanted to apologise to her. The claimant replied *'I hear you but I don't have to accept it.'*
23. In April 2023 the claimant sent emails to the then Temporary Manager at Kelvin Park, Angela Ferguson (JB69 – JB71 and JB79 – JB80). In following discussions, Angela Ferguson said to the claimant that she felt that the claimant had disrespected her. The claimant had replied that if she was not being respected then she couldn't respect, and that respect *'goes both ways'*.
24. In June 2023 the claimant sent an email to Angela Ferguson (JB71 – JB72) raising concerns at plans to move the claimant from the '3-5 room' to the '2-3 room'.
25. In June 2023 the claimant took time off work following the death of her cats. The claimant sent an email to Angela Ferguson at 1.31am on Friday 16 June 2023. The claimant was distressed at this time. The claimant did not follow the respondent's procedures in respect of reporting absence. The claimant was sent a letter asking for the reason for her absence. On the claimant's return to work after the death of her cats, the claimant was given some time 'off the floor' because she was tearful. The claimant had asked for a few days' work away from the children as she did not want to be tearful in front of the children. The claimant spoke to Angela Ferguson and was allowed to work away from the children for a period.

26. In September 2023, CDO Deanna Lee Murphy noticed that a child was unsupervised in the garden and alerted then Head of Centre at Kelvin Park, Geradine Dolan. Geraldine Dolan investigated the incident. The investigation documents are at JB81 – JB84. This includes written statements from Deanna Lee Murphy and from the claimant. The claimant was invited to a 'Management discussion' about that incident. The outcome of that Management discussion is in letter to the claimant at JB85 – JB86. That letter confirms that formal proceedings were not invoked because the claimant had accepted responsibility for what had occurred. That letter includes information to the claimant about the respondent's Bullying and Harassment Policy and the claimant's duty in respect of her Scottish Social Services Council ('SSSC') registration. Contact information for support organisations is also included.
27. In 2023, when Kirstie KachKach became manager of Kelvin Park, she introduced some new practices. Kirstie KachKach identified that there was a health and safety issue with a connecting door between adjoining rooms being used as a through route when children were in the rooms. In November 2023 Kirstie KachKach introduced a rule that staff should not use that doorway as a through route when children were in the adjoining rooms. The claimant was aware of that new rule. In November 2023, the claimant used that doorway as a through route when she was carrying boxes. Kirstie KachKach reminded the claimant that that door should not be used as a through route and asked the claimant to use the other door, to go via the corridor. The claimant replied '*No thank you*' and continued through the doorway, because she was carrying boxes and was halfway through the doorway. The claimant felt angry that Kirstie KachKach had spoken to her in front of other staff. The claimant sent an email to Kirstie KachKach about that incident (JB73 – JB75). A few days later, white, Scottish colleagues were using the same doorway and Kirstie KachKach did not stop them. That was because there were no children in the adjoining rooms at the time.
28. On 6 November 2023, there was an incident in the staff room involving the claimant and Loranna Kay. Following that incident, the claimant removed from the staff notice board a union poster about bullying and harassment in

- the workplace, wrote on this poster and taped it to Lauranna Kay's staff room locker. That notice is at JB91. Kirstie KachKach investigated the incident and had a meeting with the claimant and Lauranna Kay. The investigation documents are at JB87 - JB92 and JB94 – JB96. That includes a written statement from the claimant. Following her investigations, which included speaking to witnesses to the staff room incident, Kirstie KachKach concluded that the staff room incident had not occurred as alleged by the claimant. Kirstie KachKach arranged a mediation meeting between the claimant and Laurana Kay and put procedures in place to limit contact between them, including during breaks. The notes from the mediation meeting are at JB93 and are an accurate summary of what occurred.
29. On 15 November 2023 management at Kelvin Park were made aware of an incident involving the claimant's failure to follow the respondent's allergen protocol. Kirtis KachKach investigated this incident. The investigation notes are at JB97 – JB108. That includes Kirstie KachKach's contemporaneous notes, written statements from the claimant and witnesses, communications with the child's parents, and records of Kirstie KachKach's discussions with HR and discussions at the Management discussion held with the claimant on 25 June 2024. The letter to the claimant following that Management Discussion is at JB109 – JB110.
30. Kirstie KachKach's habit is to record notes of material interactions in her management role with other employees. Her contemporaneous notes recording her material interactions with the claimant in the period from 10 November 2023 to 19 December 2023 are at JB110 to JB116 and are an accurate record. Those notes record that on 17 November 2023 Kirstie KachKach contacted SSSC about the incident involving the claimant which had occurred on 15 December 2023. Kirstie KachKach noted that SSSC's position at that time was that no further action was required (JB112). Her contemporaneous notes recording her material interactions with the claimant in the period from 18 January 2024 to 7 October 2024 are at JB118 to JB123 and are an accurate record.

31. In December 2023 Kirstie KachKach contacted SSSC to seek advice following an incident involving the claimant, when a 2 year old child had been left alone and unsupervised. Kirstie KachKach's email to SSSC is at JB117. This concludes *"Can you please advise if you require any further information or if it is suffice for this matter to be dealt with internally."* The response from SSSC is at JB116 and includes *"I can confirm this is something that should be referred to the fitness to practise department at the SSSC as well."* The subsequent decision of SSSC in respect of those reported matters, and the reasons for that decision, are set out in their letter to the respondent of 7 December 2024 (JB156 – 159). Their decision was that the claimant's fitness to practice was impaired and to place a warning on her registration for 12 months. Kirstie KachKach has reported workers who identify as white Scottish to SSSC, where there has been concern about those individual's actions or failures.
32. The claimant was absent from work from 15 January 2024. There has been correspondence sent to and meetings with the claimant under the respondent's maximising Attendance Policy. The claimant has been referred to Occupational Health and subsequent reports have been received by the respondent (JB126 – JB144).
33. The claimant contacted ACAS for the purposes of Early Conciliation on 15 January 2024. The certificate was issued on 22 January 2024. The ET1 was presented by the claimant on 31 January 2024.

Submissions

34. 34. The respondent's representative provided his written submissions as agreed and set out in the Note of Proceedings. The respondent's representative relied on the following authorities:
- *Igen Ltd-v- Wong and others 2005 ICR 931 CA;*
 - *Hewage -v- Grampian Health Board [2012] IRLR 870;*
 - *Madarassy v Nomura International plc [2007] ICR 867; [2007] IRLR 246;*

- *Efobi v Royal Mail Group Ltd* [2021] ICR 1263 SC;
- *Carozzi v The University of Hertfordshire and Anor* [2024] EAT 169; [2005] IRLR 179;
- *Commissioner of Police of the Metropolis v Hendricks* [2003] ICR 530;
- 5 • *Aziz v FDA* [2010] EWCA Civ 304;
- *British Coal Corporation v Keeble* [1997] IRLR 336 EAT;
- *Concentrix CVG Intelligent Contact Ltd v Obi* 2023 ICR 1;
- *Robertson v Bexley Community Centre (t/a Leisure Link)* [2003] IRLR 434
- 10 • *Gloag & Henderson: The Law of Scotland* 15 edition, paragraph 26.22;
- *Ministry of Defence v. Cannock and ors* [1994] IRLR 509;
- *Vento v Chief Constable of West Yorkshire Police* [2003] I.C.R. 318
Eddie Stobart Ltd v Graham [2025] EAT 14; and
- *London Borough of Hackney v Adams* [2003] IRLR 402.

- 15 35. Although not required to do so, the claimant submitted written submissions. Both parties had the opportunity to make oral submissions on 10 April 2025. The respondent's representative did so, but the claimant did not.

Comments on evidence

- 20 36. The premise of the claimant's position was that the respondent discriminated against all employees who were not, in the claimant's words, 'white Scottish'. That position was not supported by the evidence. The respondent's witnesses included individuals who did not identify as 'white Scottish' and individuals who had close family relations with individuals who did not identify as 'white Scottish'. It was the evidence of all of the respondent's witnesses
- 25 that the respondent did not discriminate against employees who were not 'white Scottish'. Other than her own oral evidence, the claimant did not produce any evidence to support her position that the respondent

discriminated against all employees who were not *'white Scottish'*. The claimant did not dispute the evidence from heard on the diversity of the respondent's employees based at Kelvin Park. That diversity was spoken of by the respondent's witnesses as being a positive feature of that nursery, with all religious festivals being recognised and celebrated. The claimant did not rely on any documentary evidence to support her position that *'people of colour'* are underrepresented in management and leadership positions within the respondent's organisation. It was the evidence of all of the respondent's witnesses, including those who did not identify as *'white Scottish'*, that the respondent did not discriminate against those who were not of a *'white Scottish'* background.

37. The claimant was not found to be a credible witness. Her version of events often did not recognise the position of others and did not take account of the claimant's personal responsibility. The claimant did make some concessions, as set out in this decision, but the claimant did not recognise that there were occasions when she may have been at fault. The claimant did concede that she was often late for work, and that that was mainly because of issues with her pets. She conceded that after sending the email to Anne O'Reilly, Anne O'Reilly was supportive to the claimant through her university course. That position was inconsistent with the claimant's allegations of Anne O'Reilly's behaviour towards her. The claimant conceded that Catherine Finnigan had apologised to her and that the claimant had replied *'I hear you but I don't have to accept it.'* The claimant did not take any responsibility for her behaviour possibly offending others. There was evidence of a conflict of personalities between the claimant and a number of other individuals, including some who were not witnesses at this Tribunal.

38. There were some inconsistencies between the claimant's position in her evidence and the position in contemporaneous notes and / or the claimant previous written position. We took into account the claimant's contemporaneous email containing her allegations of Anne O'Reilly's behaviour (JB63 – JB64). The claimant stated in that email that she was

feeling '*emotionally vulnerable*'. On balance, we found Anne O'Reilly's version of events to be more credible than the claimant's.

39. The claimant did not recognise that Lauranna Kay required to have discussions with the management team at Kelvin Park in the course of her duties as Trade Union Representative and Health and Safety Representative. The claimant accused Lauranna Kay of being '*close to management*'.
40. The claimant did not take responsibility for her actions in respect of the issues of children being offered / allowed to take food which was not appropriate for them because of their particular dietary requirements. We accepted the respondent's witnesses' evidence that although there are systems in place at the nursery to ensure that children's dietary needs are met, it is the individual responsibility of each CDO / Support worker to ensure that children are not given food which does not meet their dietary requirements. Saj Ahmed was a particularly impressive witness. Her evidence was consistent with Kirstie KachKach's position that that each Child Development Officer has responsibility to ensure children in their care are not given inappropriate food, whether for religious or dietary reasons or from parents' personal preferences or for allergy reasons, whether diagnosed or suspected. The claimant failed to recognise her own responsibility to ensure dietary needs were met and did not appear to recognise the seriousness of ensuring so.
41. The claimant did not recognise that she had a personal responsibility to ensure that she was at work on time. She did not recognise that her persistent lateness had consequences for the care of children and for other staff. She did not recognise that the procedure in place for allowance of bereavement leave did not extend to bereavement leave on the death of a pet. She did not recognise that steps had been taken to assist her on her return to work after the death of her cats, by allowing her time working away from children. She did not recognise that she required to inform her employer if she was not attending work, so that appropriate cover arrangements could be made. She did not fully recognise that that she had a responsibility to ensure that the location of children in her care was known and that they were not left alone unsupervised. Throughout these proceedings the claimant showed a lack of

responsibility for her actions and failure to recognise risk. Markedly, the claimant failed to recognise the risk of a two year old child being unable to be located and then found alone in a locked toilet cubicle. We accepted Kirstie KachKach's evidence on that incident, which was supported by her contemporaneous notes. The fact that Kirstie KachKach had sought advice from SSSC prior to formally reporting the incident points to her dealing with the situation appropriately and not because of the claimant's race or religion. We accepted Kirstie KachKach's evidence that the matters reported to SSSC concerning the claimant were not '*everyday occurrences*', as alleged by the claimant. The claimant's position that these were '*everyday occurrences*' is inconsistent with the decision of SSSC (JB156 – 159).

42. In contrast to the claimant, the respondent's witnesses were found to be credible. They were open when giving their evidence and did not seek to avoid any questions. They made concessions and accepted their own responsibilities. Kirstie KachKach and Angela Ferguson were particularly impressive witnesses. There had been a number of management changes at Kelvin Park. Both Kirstie KachKach and Angela Ferguson took steps to try to address the issues and deal appropriately with the claimant in respect of her responsibilities as an employee of the respondent. Weight was attached to the contemporaneous records kept by Kirstie KachKach, which supported her position in evidence before the Tribunal. The respondent's witnesses' versions of events was found to be more credible than the claimant's version of events, and was on some occasions supported by contemporaneous documentary evidence and / or the evidence of more than one witness. For these reasons, where there was a conflict in the evidence of the claimant and the evidence of a respondent's witness, we preferred the evidence of the respondent's witness. The claimant did not then prove that events occurred as relied on by her. The claimant was unsuccessful in her complaints because she did not prove that events had occurred as relied upon by her.

43. We did not accept the claimant's submission that the volume of evidence before us showed that the claimant was being discriminated against and victimised on the grounds of her race. The evidence showed that there were

issues with the claimant's lateness and her relations with other employees. In a multi-cultural environment, where approximately 1 / 3 of the employees do not present as white Scottish, and where other employees who are not of a white Scottish background have not seen evidence of such discrimination, it is not probable that the respondent discriminated against all employees who were not white Scottish. We accepted the respondent's representative's submissions on the credibility and reliability of witnesses, particularly at paragraph 8 of submissions. The claimant did not prove on the facts that her race or religion were reason for the respondent's treatment of her.

44. With regard to the allegations relied upon as set out in the List of Issues (Appendix A):

(1) The claimant did not prove that in November 2023 Kirstie KachKach had spoken to her in an angry way. We accepted the evidence of Kirstie KachKach on what had occurred. Kirstie KachKach notes at JB111 were significant. We took into account that the claimant accepted before us that in this exchange she had challenged Kirstie KachKach's authority. We accepted Kirtie KachKach's denial that the claimant's race had anything to do with the interaction.

(2) The claimant did not prove that in November 2023 Geraldine Dolan had implied what was alleged by the claimant. We accepted the evidence of Geradine Dolan that no such exchange had occurred.

(3) The claimant did not prove that in June 2023, following the claimant's return to work after the death of her cats Christina Bell bullied and harassed the claimant. We accepted Christina Bell's evidence that although she was also a cat lover she did not speak the claimant about the death of the claimant's cats because she was concerned about the claimant's behaviour towards her.

(4) The claimant did not prove that Christina Bell had said what was alleged by the claimant.

- 5 (5) The claimant did not prove that the named individuals refused to support the claimant, as alleged. Janet Keller, Christina Bell and Eilidh Benson were clear and consistent in their positions on required ratios between staff and children and on procedures to be followed if assistance was required. We accepted the respondent's witnesses' evidence that there was no occasion when the claimant was refused assistance.
- 10 (6) On 31 October 2023 (while both were dressed for Halloween), Christina Bell did say to the claimant "*dragon, aye you are a dragon*". The claimant was wearing a dragon Halloween costume at the time. Christina Bell was wearing a Frozen princess costume and the claimant had made a comment to her about her costume being inappropriate for her. The claimant's race or religion was not the reason for or a significant influence to what Christina Bell said to the claimant.
- 15 (7) On 6 November 2023, there was an incident in the staff room because the claimant had sat at a seat where Lauranna Kay had set out her lunch. The claimant did not prove that Lauranna Kay sat '*halfway across*' the claimant, as alleged by her. The contemporaneous notes of Kirstie KachKach in respect of her investigation of what had occurred were significant (JB88 – JB89) The claimant's race or religion was not the reason for or a significant influence to these events.
- 20 (8) The contemporaneous notes of Kirstie KachKach were significant (JB87 – JB88 and JB93). We accepted the evidence of Kirstie KachKach and Catherine Finnigan that the meeting had been conducted a balanced way and that there had been no favouritism shown to Lauranna Kay. The claimant's race or religion was did not affect and was not a significant influence to the conduct of the meeting. It was significant that the claimant made no complaint about Kirstie Kachkach in her letter at JB94 – JB96.
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- 5 (9) The claimant did not prove that Lauranna Kay had said what was alleged by the claimant. The contemporaneous notes of Kirstie KachKach were significant (JB87 – JB88). It was significant that the claimant made no reference to this allegation in her letter at JB94 – JB96.
- 10 (10) In April 2023 the claimant was spoken to about her timekeeping by Angela Ferguson. The claimant admitted that she was often late for work. The claimant's race or religion was not the reason for or a significant influence to Angela Ferguson's interaction with the claimant.
- 15 (11) The claimant did not prove that her interactions with Catherine Finnigan re being late for work were as alleged by the claimant. The credible evidence of Catherine Finnigan and Angela Ferguson was preferred to that of the claimant. The claimant's race or religion was not the reason for or a significant influence to Catherine Finnigan's interaction with the claimant.
- 20 (12) The claimant did send emails on 19 September and 4 October 2021 alleging that she was not getting support (JB62 – JB66). The claimant did not prove that Anne O'Reilly said to the claimant what was alleged by her. We accepted the evidence of Anne O'Reilly that that had not occurred. We took into account that in her email to HR the claimant did not complaint that Anne O'Reilly's actions were discrimination or harassment or were related to or affected by the claimant's race.
- 25 (13) None of the conduct which is relied upon by the claimant and is found to have occurred had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant did not prove that any of the conduct relied upon and found to have occurred had that effect. No medial evidence was relied upon by the claimant. The claimant
- 30 had a number of other issues in her personal life which had an effect

on her health. The claimant's race was not the reason for and was not a significant influence to the respondent's conduct towards her.

5 (14) The claimant did not prove that Deanna Lee Malone had said what was alleged by the claimant. We found Deanna Lee Malone to be a credible witness, who did not identify as '*while Scottish*'. We accepted her evidence that the alleged comments did not '*align with her values*'. We accepted the evidence of Deanna Lee Malone and Chloe Richardson rather than the claimant's version of events.

10 (15) The claimant did not prove that she was treated less favourably than her named comparator. We accepted the credible evidence of Anne O'Reilly, Catherine Finnigan and Angela Ferguson. There was no documentary or other evidence to support the claimant's position. There was no contemporaneous complaint by the claimant about the alleged less favourable treatment.

15 (16) The claimant did not prove that she was treated as alleged by her on her return to work after the death of her cats. We accepted the credible evidence of Catherine Finnigan and Angela Ferguson. The claimant's race was not the reason for and was not a significant influence to the respondent's conduct towards her

20 (17) The claimant did not prove that she was treated as alleged by her in relation to her lateness for work. We accepted the evidence of Catherine Finnigan and Angela Ferguson on their dealings with the claimant's lateness for work. The claimant admitted that she was often late for work, the reason for that lateness being mainly because of her
25 dealing with issues with her pets. The claimant's race was not the reason for and was not a significant influence to the respondent's conduct towards her

30 (18) The matters which were reported to the SSSC about the claimant were not matters which '*happen in everyday care*', as alleged by the claimant. These matters were appropriately reported and the decision of the SSSC is as set out in (JB156 – 159). The claimant's race was

not the reason for, or a significant influence to the reporting to SSSC of these incidents.

- 5 (19) In or around 18 August 2022, Saj Ahmed did respond to the claimant as alleged. That response was in line with the respondent's procedures and individual support worker's responsibilities to ensure the dietary requirements of children are met. The claimant did not prove that Saj Ahmed treated the claimant less favourable than she treats or would treat employees of a 'white Scottish' origin. We accepted the credible evidence of Saj Ahmed and Catherine Finnigan.
- 10 Saj Ahmed identifies as Scottish Pakistani Asian. The claimant's race was not the reason for, or a significant influence to Saj Ahmed's comments. We accepted the credible evidence of Saj Ahmed that all employees were similarly referred to the dietary list.
- 15 (20) None of what is relied upon by the claimant and was found to have occurred was treatment because of, or significantly influenced by, the claimant's race.
- (21) The claimant did in 2018 make complaints to the respondent about being bullied and harassed in relation to her race. That was a protected act in terms of Section 27 EqA.
- 20 (22) The claimant did not prove that she was *intentionally "moved to a more hostile environment"* and *"set up to fail"* by being moved to Kelvin Park in 2021.
- (23) The claimant was not treated to her detriment, as alleged by her, because she did the protected act in 2018.

25 **Discussion and decision**

45. We approached the considerations of the claimant's complaints under the Equality Act in terms of the Burden of Proof provisions as set out in s136 of Equality Act 2010 and the Barton Guidelines as modified by the Court of Appeal in *Igen Ltd. (formerly Leeds Careers Guidance) and ors. –v- Wong and others* 2005 ICR 931, CA (as approved by the Supreme Court in *Hewage*
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–v- *Grampian Health Board* [2012] IRLR 870). We accepted the respondent's representative's reliance on in *Madarassy v Nomura International plc* [2007] ICR 867 and *Efobi v Royal Mail Group Ltd* [2021] I.C.R. 1263. We accepted the respondent's representative's submissions that the claimant had not met the initial burden of proof. We accepted his submission that there was no evidence to properly make a finding that the respondent "*is prejudiced against not just people of colour, but anyone who is not a white Scottish person.*", as was alleged by the claimant. We accepted his submission that the respondent's witnesses were measured, credible and reliable and that they answered the questions that were asked of them, recalling what they could recall and without trying to give evidence where they could not recall. We accepted his submission that in many of the Issues where the facts were disputed, the respondent relies on evidence from more than one witness and so for the claimant's version to be preferred, we would require to disbelieve two or more of the respondent's witnesses, which there is no basis to do. We accepted his submissions on the evidence heard.

46. The claimant did not prove facts from which an inference could be drawn that the respondent treated the claimant less favourably than it treats or would treat others who did not share the claimant's relied upon protected characteristic. On the basis of the findings in fact and in all the circumstances, there was no evidence from which the Tribunal could conclude that the claimant's treatment because of the relied upon protected characteristics. The burden of proof did not move to the respondent. It was for these reasons that the claimant's complaints reliant of the EqA were unsuccessful and dismissed.

47. In respect of the complaints under section 27 EqA (harassment), we followed the approach suggested by the respondent's representative to:

- (1) Determine whether any of the incidents of alleged harassment occurred;
- (2) Only if they are found to have occurred, determine whether that conduct related to the protected characteristic relied upon; and

- (3) If found to be so related, to determine whether that conduct had the purpose or the effect of violating the claimant's dignity or creating an intimidating hostile, degrading, humiliating or offensive environment for her.

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Harassment on the grounds of race (being national origin/colour) - s26 Equality Act 2010

48. The allegations relied upon by the claimant as unlawful harassment on the grounds of her race are listed at (1) to (13) in the attached List of Issues. As set out in the 'Comments on Evidence' section above, the claimant did not prove that all of what was relied upon occurred. As set out in the 'comments on Evidence' section, none of that conduct found to have occurred related to the claimant's protected characteristic of race. None of that conduct found to have occurred was because of, or significantly influenced by, the claimant's race. None of the allegations set out at (1) to (13) in the attached List of Issues was unlawful harassment within the meaning of section 26. The complaint under section 26 reliant on the claimant's protected characteristic of race is not well founded and is dismissed.

20 *Harassment on the grounds of religion – Islam – s26 Equality Act 2010*

49. The claimant did not prove that what was relied upon by her as unlawful harassment on the grounds of her religion occurred. As set out in the 'Comments on Evidence' section, what is relied upon by the claimant as conduct related to the claimant's protected characteristic of race was not found to have occurred as alleged by the claimant. We accepted the credible evidence of Deanne Lee Murphy. The complaint under section 26 reliant on the claimant's protected characteristic of religion is not well founded and is dismissed.

Direct Discrimination – Race – s13 Equality Act 2010

50. The allegations relied upon by the claimant as direct discrimination on the grounds of her race are listed at (15) to (20) in the attached List of Issues. As set out in the 'Comments on Evidence' section above, the claimant did not prove that all of what was relied upon occurred. None of the allegations set out at (15) to (20) in the attached List of Issues was direct discrimination as alleged by the claimant. None of that conduct found to have occurred was because of, or significantly influenced by, the claimant's race. The complaint under section 13 is not well founded and is dismissed.

Victimisation – s27 Equality Act 2010

51. The claimant's complaint in 2018 was a protected act within the meaning of section 27. We accepted the respondent's representative's submissions on the section 27 complaint. There was no evidence that Kelvin Park was "a more hostile environment" than Renfrew Street nursery. There was no evidence that respondent's intention in moving the claimant was to "set her up to fail." We accepted that it was not credible that the respondent moved the claimant to Kelvin Park from Renfrew Street approximately 2 years after the protected act, because the claimant had raised a grievance and because there was a wish to set her up to fail. That consequence was not consistent with the claimant's position in her email of 5 October 2021 (JB66) in respect of her belief that that previous issue had been resolved. We accepted the respondent's position on the reason for the move. The claimant did not prove that she was intentionally "moved to a more hostile environment" and "set up to fail" by being moved to Kelvin Park. The claimant did not suffer a detriment, as alleged, because of having done the protected act. The section 27 complaint of victimisation is not well founded and is dismissed.

Time bar

52. We accepted the respondent's representative's submission on time bar. The acts complained of listed as issues 3,4,5, 10, 11, 12, 17, 18, 20, and 23 are out of time, on application of the EqA section 123(3)(a) because those acts occurred prior to 16 October 2023 and are not part of a continuing act or continuing course of treatment. We accepted the respondent's reliance on

- 5 *Commissioner of Police of the Metropolis v Hendricks* [2003] I.C.R. 530 (particularly at paragraph 52) in relation to consideration of what constitutes a continuing act. We accepted that there is no evidence to support a finding that the respondent is prejudiced in the way described by the claimant i.e. that the respondent is prejudiced against anyone who is not white and Scottish. We took into account the number of individuals alleged to have acted discriminatory against the claimant and considered this with reference to the Court of Appeal's guidance in *Aziz v FDA* [2010] EWCA Civ 304 (at paragraph 33) "In considering whether separate incidents form part of "*an act extending*
10 *over a period*" within section 68(7)(b) of the 1976 Act [predecessor of section 123 EqA], *one relevant but not conclusive factor is whether the same individuals or different individuals were involved in those incidents*".
- 15 53. We accepted the respondent's representative's submission that it was not just and equitable to extend time in respect of any of those acts. We accepted their reliance on the claimant's evidence that she was aware of the concept of discrimination and believed that she had been discriminated against on grounds of her race from 2017. We accepted that there was no suggestion from the claimant that she was unaware of how to assert her rights. We accepted their reliance on the guidance from the EAT in *Concentrix CVG*
20 *Intelligent Contact Ltd v Obi* 2023 ICR 1. We accepted their reliance on their being no explanation from the claimant on the reason for the late presentation.
- 25 54. As all of the claimant's complaints are dismissed the claimant is not entitled to remedy.

9 July 2025

Date Sent to Parties