EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000247/2025

Held in Glasgow on 28 July – 1 August 2025
Deliberations: 18 – 20 August 2025

Employment Judge D Hoey

Ms M Idris	**Claimant** **Represented by:** **Mr McCormack - Partner**
Anyiso SCIO	**Respondent** **Represented by:** **Ms Scarborough-Lang – Litigation Consultant**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The indirect discrimination complaint was withdrawn at the Hearing and is dismissed.

2. Each of the remaining complaints is ill founded and the claim is dismissed.

REASONS

1. The claimant brought complaints of automatic unfair dismissal, race discrimination and whistleblowing detriment. The claimant was represented by her partner who understood the legal principles and procedure. The respondent was represented by a consultant.

2. The Hearing began by a reminder of the overriding objective and the need for both parties to work together to assist the Tribunal in ensuring that everything that was done was fair and just with due regard to cost and proportionality. A discussion took place as to how evidence was taken and the importance of ensuring relevant questions were put to each witness to ensure both parties cases were fairly put to each other's witnesses and that relevant evidence was led. The parties were reminded that the Tribunal would only consider evidence that had been agreed or that was led before it.

Case management

3. The parties had worked together to focus the issues in this case, there having been a previous case management preliminary hearing that had assisted in identifying the legal issues to be determined. The parties agreed what the issues were. The parties were also able to agree timing for witnesses and the parties worked together to assist the Tribunal in achieving the overriding objective, in dealing with matters justly and fairly taking account of the issues, cost and proportionality.

4. Each witness had produced a witness statement which assisted in focussing cross examination and the Tribunal was able to ensure that that relevant questions were put to each witness and that the claimant's case was advanced. By the submissions stage, the claimant had withdrawn the indirect discrimination complaint and focused the remaining complaints.

5. Regrettably, due to a failure by the respondent's agents not communicating properly nor considering the Tribunal Note, an unless order requiring exchange of witness statements had not been followed. As the claimant was able to confirm no prejudice had been occasioned and no expenses had arisen, the respondent was permitted to rely upon the statement that was exchanged. An apology was tendered and the respondent's agent understood the importance of ensuring Tribunal Orders were considered and followed.

Evidence

6. The parties had produced a joint bundle of 248 pages. The Tribunal heard evidence from the claimant, her partner, Ms Dickson (who was employed by another body who worked with the claimant), Ms Ezechi (the claimant's manager), Ms Abbas Mohammed Ali (a former employee of the respondent), and Dr Hutchin-Bellur (a former employee of the respondent). A witness statement had been provided by another former employee but that was not considered as the individual did not attend to give evidence.

Facts

7. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing. The Tribunal only makes findings that are strictly necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). The Tribunal only records facts it found as necessary to determine the issues in this case.

8. There were a large number of material facts in dispute in this case. The conflict was resolved by considering the entire evidence and making a decision as to what was more likely than not to be the case with regard to what was written and said at the time (when viewed in context) in relation to

each individual fact. The parties had agreed some of the key facts which was of assistance to the Tribunal.

Background

9. The respondent is a registered charity that has its mission to ensure ethnic minority women, children and young people from all backgrounds are given the support and services they need to live better and safer lives free from discrimination and abuse. The aim is to equip service users with confidence via skill development workshops, training and counselling to become independent. Service users were of different ethnicities.

10. The claimant was employed as a community development officer on a fixed term contract of employment. The claimant was Arabic. She commenced employment with the respondent on 6 May 2024 and that she signed a copy of the terms and conditions which confirmed she was to work 16 hours a week Mondays and Wednesdays 9am to 3pm and Fridays 9am to 4pm.

11. The claimant's employment was also subject to a number of non contractual policy documents, which included a disciplinary and grievance policy and other policies (contained within an employee and volunteer handbook). That included a donations policy (which set out a process for registering donations made to the respondent) and a computer, email and internet use policy (which noted that staff communications could be monitored for business purposes).

12. The respondent's equality and diversity policy stated that they were an equal opportunity organisation committed to equality of opportunity and provided a service and following practices free from discrimination. People were said to be valued with diverse opinions, cultures, lifestyles and circumstances. The respondent was committed to provide an environment free from discrimination in which individuals were welcomed.

13. The respondent also had a grievance policy which was said to provide a readily accessible procedure for addressing any concerns regarding the working environment or work. The informal raising of concerns was recommended which failing a formal process could be followed in the event anyone was unhappy with anything that occurred at work.

14. The claimant's employment was subject to a 6 month probationary period and in the event of the claimant not meeting the required standards, her employment could be terminated (upon the giving of 1 week's notice).

Staffing

15. The claimant's line manager was Ms Ezechi who is the manager of the charity. There were around 8 staff members in total, including the manager, the claimant, a music teacher and other sessional workers. Volunteers also

assisted the respondent. Ms Ezechi reports to a Board which includes an Arabic person and others of different races and ethnicities. No issues had been raised in connection with Ms Ezechi being discriminatory prior to the issues raised by the claimant in this claim.

Claimant and Ms Ezechi do not get on

16. There were a number of occasions where the claimant and Ms Ezechi did not agree and each felt annoyed with the other and the working relationship was not always working correctly. There were occasions where the claimant felt that Ms Ezechi was being unprofessional, aggressive and demanding. Ms Ezechi was on occasion frustrated as to how the claimant had carried out her duties and her frustration would be evident to the claimant and others from how Ms Ezechi conducted herself in terms of what she said and how she said it, together with her behaviour. On occasion there would have been discussions as between the claimant and Ms Ezechi which the claimant did not enjoy but there were no discussions which were unlawful.

Wages concern

17. On 18 July 2024 the claimant sent an email to Ms Ezechi raising a concern that she had not been paid for all hours worked. She said: “I just wanted to remind you about the mistake that has been done in my payment. I am being paid as I am working 17.32 hours a week whereas I am working for 19 hours a week. Hope this can be corrected this morning and I can get paid for the non paid hours for the previous months. Thanks very much”. There was no reference to previous discussion or this matter having been raised before.

18. Ms Ezechi responded that day saying: “We will discuss this tomorrow as your contracted hours shown in your contract is 16 hours a week. Any other accrued hours of work should be an overtime (sic) which I should be aware of so that it will be added to your payment. Also we advice (sic) that our staff should maintain the specified hours of work unless we have additional events or activities which most times are as time off in lieu. However, this wouldn’t be a problem as we would recalculate your work hours to check the differences”. The claimant replied thanking Ms Ezechi.

Funding opportunity

19. On 26 September 2024 the claimant identified a potential funding opportunity for the respondent and contacted the organisation who replied to the claimant the same day with a link to the information webpage and to the online form which could be submitted.

20. The claimant sent the email to Ms Ezechi on 27 September 2024 saying: “this is a funding opportunity we can apply for and use it for the event organisation.

You can check it below". Ms Ezechi replied thanking the claimant and noting that as the deadline was 11 October 2024 the claimant was asked to send the draft application. She asked this be done prior to 7 October to give her time to review and consider the costings.

21. On 4 October 2024 (at 5.19pm) Ms Ezechi sent another email to the claimant to remind her of the previous emails and discussions and that she was still waiting for the draft application by close of business on 7 October.

22. On 6 October 2024 (at 5.25pm) the claimant replied saying "there are some docs and info required for completion of the application. You can find the requirements attached to the email. Looking forward to receiving them so I can submit as soon as possible".

23. At 1245 the next day Ms Ezechi replied: "I've noticed that you seem not to understand my instructions or that they are difficult for you to adhere to. These applications are not intended for you to submit. As I've mentioned in previous emails concerning funding applications, you are to send me the drafts for review. I will handle the costings and submission process. I am the designated funding officer but I may request you draft applications for me to review and submit. Given this, I'm unclear about your recent actions. Could you please explain what you meant by your response".

24. At 1.20pm the claimant replied: "I don't understand why do you have to use this language with me! The application is not a word document. You can check it! If you want me to draft it, that means it will be started with a window on their website that is linked to my email. I have not submitted anything. As you can easily read in the email there are info and documents we need to compete in order to submit. You can go to their website and see how the application works if there is anything still unclear!".

25. Sixteen minutes later Ms Ezechi replied: "If the application is meant to be submitted directly through their website you should have informed me or asked me what you should do. Your recent email suggests that my previous instructions may not have been fully understood or read carefully. Additionally the deadline I provided for sending me the draft applications is today and I am expecting to receive them. Can you please send me the draft in a Word document by close today". Ms Ezechi was frustrated that the claimant had not done what she had asked which had led to delays. This interaction was emblematic of the working relationship between the claimant and Ms Ezechi

Contractual hours

26. Following discussions, Ms Ezechi agreed to extend the claimant's contractual hours to 20 hours per week from October 2024 which was sought by the claimant.

Temperature in the big room

27. On 27 November 2024 the claimant contacted Ms Ezechi by email to bring to her attention some complaints she said she had received about how cold the big room was. She alleged radiators were not working and wanted her thoughts. Ms Ezechi asked the claimant to check the heaters were turned on and to check if they worked properly. She suggested the heaters be turned on before the classes started which would allow time for the room to heat up. The claimant said she had already tried this.

28. Ms Ezechi replied around 1.5 hours later as follows: “You didn’t try this as we just checked and noticed that some of them are not even switched on. As a matter of fact the two big radiators out of 3.5 radiators in the big room were switched on by you after we inspected them this morning. So if 2 big radiators out of 3.5 radiator in the big room are not even switched on how then did you check the radiators?”.

29. Two hours later the claimant replied: “I already mentioned that I wasn’t aware they were there but nonetheless I received the same complaint today even after we switched them on this morning”.

30. Fifteen minutes later Ms Ezechi replied: “You have worked with us for more than 5 months and not aware of heaters on the wall which means you didn’t even make the effort to look for solution after the complaint before bringing them to me. Meanwhile the temperature in the room today is much better and since we do not leave the hearer overnight it takes time to heat up. We also have 4 other mobile heaters of which you mentioned today that one of them isn’t working and while the workshop us going on only one of them was switched on leaving others unused. The socket under the TV was not in use and could have been used for one of the mobile heaters. I advice (sic) that you should get familiar with your work environment and look for solutions for little things like this before bringing them to me.”

31. Ms Ezechi was becoming frustrated with the claimant and considered this another example of the claimant failing to follow instructions. The exchange was evidence of the parties’ working relationship deteriorating.

Informal meeting

32. Ms Ezechi was concerned about how the claimant had been performing at work and frustrated as Ms Ezechi believed that her instructions were not being followed. She decided to hold an informal meeting with the claimant. She decided to bring along one of the Board members. The informal meeting took place on 9 December 2024. There was no formal notice of the meeting nor any notes taken. The meeting was an attempt by Ms Ezechi to discuss how the claimant had been performing and to set out concerns Ms Ezechi had.

33. Ms Ezechi wanted to raise her belief that the claimant had been unable to follow instructions, including the issue with the heaters and similar issues. The meeting was not heated and the claimant listened to the points made.

Duplicate gift application

34. On around 9 December 2024 the claimant had submitted an application for gifts to a third party organisation. A partner organisation (which works with the claimant) had made the same application and as a result the respondent's application was declined. On 11 December 2024 Ms Ezechi sent an email to the claimant noting that she must be informed of any applications or gifts to be submitted on the respondent's behalf by any partners and approved by her to avoid duplication. Ms Ezechi considered that there had been a miscommunication as between the claimant and the partner that led to the duplication.

35. There was a heated discussion as between Ms Ezechi and the claimant about this matter. Ms Ezechi considered this to be another example in her mind of the claimant having failed to follow instructions and she was becoming concerned as to the claimant's ability to do so. The claimant was equally frustrated and concerned as to how Ms Ezechi was speaking to her and did not consider that the claimant had done anything wrong.

Unrecorded donated items

36. On 16 December 2024 a charity informed Ms Ezechi they had given a donation of various items to the claimant on 9 December 2024. The claimant received the donation of items on 9 December 2024. As she was busy she omitted to record the donation and comply with the respondent's policy in this regard. The claimant knew of the policy and had omitted to follow it.

37. On 18 December 2024 (at 10.47am) Ms Ezechi sent the claimant an email noting that the charity had advised her a donation had been made but the items had not been recorded or located. She noted that she had not been told of the donation and had been unable to thank the donor. She asked the items be taken to her office. The claimant replied the next day noting she had been busy and had omitted to register the donation. She said she would ask a colleague about the location of the items.

Singing event

38. On 18 December 2024 an event had been arranged by the respondent that involved singing for service users. The claimant wished to attend the event but Ms Ezechi required the claimant to carry out her duties which involved other tasks. The claimant was unhappy that she had not been able to attend that event. Ms Ezechi wished the claimant to focus on her duties.

Hot water

39. Also on 18 December 2024 (at 11.38am) Ms Ezechi sent the following email to the claimant headed “Hot water”: “I have noticed that for some time now the hot water you usually bring out for our workshops are very lukewarm including the one today. Is there any particular reason why you always bring them out almost cold? For food poisoning and health and safety reason this is totally unacceptable. Could you check this and replace the water we have for the workshop today”.

40. The next day the claimant sent a WhatsApp message to the respondent’s WhatsApp group stating: “Hello all, how is the water I usually put out for hot drinks?”. The WhatsApp group had over 250 service users. A number of service users responded commenting upon the water and its temperature.

41. Ms Ezechi considered the claimant’s email to be a breach of confidentiality as the claimant had alerted all the respondent’s service users to the hot water issue which Ms Ezechi had expected (but not asked) be kept confidential.

42. On 19 December 2024 at 10.47am the claimant sent Ms Ezechi a copy of some of the responses about the water temperature and asked if she needed anything else. The comments the claimant had forwarded were positive comments about the water.

Christmas party

43. Ms Ezechi did not reply to the claimant’s email on 19 December 2024 as she was busy preparing for the Christmas party (which took place on 20 December) and attending to work related matters.

Health and Safety

44. At 10.29am on 19 December 2024 the claimant sent Ms Ezechi an email headed “Safety and health hazards”. She said that “as you were talking about safety and health hazards I thought it would be good to bring to your attention some issues I think really pose a risky situation for our service users and it is better to consider fixing them sometime soon.” She referred to issues as to a heater, a leaking wall, cupboards and shelving in the ladies’ toilets.

45. Ms Ezechi did not read this email until after the Christmas party as she was engaged in work related activity in connection with the party.

Holiday closure

46. As the respondent was closing over the Christmas period, staff would be asked to return property, keys etc. In the usual course an email was sent from the general ‘info’ email account to the claimant, Ms Ezechi and a colleague

on 19 December 2024 (when only Ms Ezechi and the claimant were working) regarding holiday closure and the return of property. This email was sent on 19 December 2024 at 1.02pm. It was sent by a Board member. The email also served to inform recipients that the respondent would be closing for Christmas on 20 December 2024.

Christmas party and Ms Ezechi's decision as to the claimant's employment

47. The Christmas party took place on 20 December 2024. The relationship between the claimant and Ms Ezechi was not good. Ms Ezechi had decided that the claimant's employment was not likely to be able to continue (and she was liaising with the Board as to terminating the claimant's employment). The relationship between the claimant and Ms Ezechi was fraught. While the claimant felt she was being reprimanded and excluded by Ms Ezechi, Ms Ezechi was focussing on asking the claimant to carry out her duties. Ms Ezechi was frustrated because she believed the claimant had not properly carried out her duties to Ms Ezechi's satisfaction.

Removal from WhatsApp group and respondent systems

48. Ms Ezechi had been unhappy with how the claimant had been performing. She had spoken to her Board as to her options. She had concluded that the relationship had not worked and wished to dismiss the claimant, believing that there had been no demonstrable improvement in performance since the informal meeting. She did not engage with the claimant as she was awaiting Board approval to proceed with the dismissal.

49. Ms Ezechi decided to remove the claimant from the WhatsApp group (and respondent's systems) on 20 December 2024 at around midnight. Ms Ezechi was unhappy with how the claimant had dealt with the issue around the hot water and was awaiting a decision from the Board as to the claimant's continued employment. The decision was taken before Ms Ezechi had read the claimant's emails of 19 December 2024.

50. Ms Dickson was also removed from and then reinstated to the WhatsApp group. Ms Dickson was not an employee of the respondent and her circumstances were materially different to the claimant's position.

Termination of claimant's employment

51. The Board approved Ms Ezechi's decision to end the claimant's employment. Ms Ezechi had decided to dismiss the claimant because of her conduct. She had drafted an email which was finalised by the Board.

52. On 23 December 2024 at 7pm an email was sent from the "info" email account of the respondent headed "termination of employment" in the following terms: "We regret to inform you that your employment will officially be terminated

effective today. The reasons for this decision are as follows. 1 Inability to follow instructions – Despite repeated discussions including the informal management meeting on 9 December 2024 there have been ongoing challenges regarding your ability to follow instructions and policies. On multiple occasions attempts to provide feedback or guidance have been met with resistance or unrelated responses. 2 Unrecorded donated items – Items donated and handed over to you were neither documented nor reported as required. Additionally there whereabouts remain unaccounted for which is a serious lapse in your responsibilities. 3. Breach of confidentiality - Sharing information from the email sent to you on 18 December 2024 within the WhatsApp group was a serious breach of confidentiality. This action violates the confidentiality agreement outlined in your contract and constitutes gross misconduct. After thorough consideration we have concluded that these issues undermine the trust and standards required by for your role. As a result your one week notice period will commence today…"

53. As the claimant had worked for less than two years, the respondent was only required to give 1 weeks' notice which was what she received. The claimant's employment ended on 23 December 2024.

Observations on the evidence

54. The Tribunal considered the evidence carefully and in context of all the evidence before this Tribunal, both in writing and that presented orally.

55. **The claimant** was clear in her belief that she had been discriminated by Ms Ezechi. She was angry as to how she had been treated and wished to emphasise her position. The claimant was articulate. On a number of occasions the claimant had to be asked to answer the question put in cross examination rather than present her position in relation to her views to emphasise points she wished to make. The claimant was angry at how she had been treated and believed that she had been treated unlawfully. There was clear animus with Ms Ezechi. The way in which the working relationship had been dealt with by Ms Ezechi was poor in places. That was in no way because of the claimant and was a matter for which the respondent was responsible.

56. While the claimant was articulate and clearly able to set out her position (on occasion with force) it was notable that at no stage whatsoever during her employment had she raised discrimination or her concerns (or ever suggested race was a factor in the treatment). The claimant had been able to stand up to Ms Ezechi and had been able to set out her position at the time. Nevertheless at no stage had the claimant suggested at the time that she believed the treatment she had believed she had received was connected to race (or otherwise). It was clear, however, that the claimant had found the

working relationship challenging. It was clear that the working relationship had deteriorated and the claimant viewed her interactions with Ms Ezechi in that light. It was likely that on some occasions the claimant's memory was affected by how she had been treated and her belief as to Ms Ezechi's motivations and the fact that the working relationship had not been positive. The Tribunal found that in places the claimant's memory had been defective as to how she had been treated and on occasion the Tribunal found Ms Exechi's recollection to be more likely than not accurate in comparison to the claimant's recollection which had been affected by the claimant's view of Ms Ezechi and her perceived motivations and how she had been treated.

57. The Tribunal recognised the impact the treatment the claimant had while at work had upon the claimant. She had been severely affected by the way in which she had been managed. That is a matter on which the respondent should reflect. However, for the reasons given in this judgment the Tribunal was satisfied the treatment that had occurred was not due to race or unlawful.

58. **Mr McCormack** was able to give his evidence to the best of his abilities. He recognised that he was also viewing matters from the claimant's perspective and was naturally not considering matters objectively. There was no doubt he was sympathetic towards the claimant and was able to explain how the treatment the claimant had received at work impacted upon her.

59. **Ms Dickson** was also able to give her evidence in a clear manner. While she indicated that she was not a friend of the claimant nor met with her in a social context, Ms Dickson had joined the claimant's charity following the termination of her employment and Ms Dickson was clearly very sympathetic towards the claimant. While a number criticisms were made of Ms Ezechi in Ms Dickson's evidence, it was regrettable that none of the criticisms levelled in her evidence had been raised at the time. Ms Dickson wished to remain professional and impartial but the absence of any concerns having been raised at the time was a relevant considering in assessing what had occurred when viewing the evidence in context. On occasions the Tribunal considered Ms Dickson's memory to have been (naturally) imperfect particularly in light of her support of the claimant in places. While Ms Dickson may have believed Ms Ezechi to have treated the claimant unfavourably at times, she had not been fully aware as to the employment issues and did not have full visibility of the workplace or the background of the respondent (such as in relation to the position adopted in relation to Arab people, whether on the board or with regard to service users generally).

60. **Ms Abbas Mohammad Ali** had given evidence as to how she believed she had been treated. It was notable that she had chosen not to raise any issue during her employment. She was clearly sympathetic towards the claimant.

Her evidence was taken into account when assessing the reason why the claimant was treated in the way she was by Ms Ezechi.

61. **Dr Hutchin-Bellur** gave her evidence in a clear and strong fashion. She remained unhappy as to how she had been treated by the respondent and Ms Ezechi, particularly around the decision not to place her on furlough at the time. Dr Hutchin-Bellur was very careful and precise in the giving of her evidence and the Tribunal took her evidence in to account. Regrettably no issue was raised at the time of her employment (or even thereafter). While the treatment she received was relevant and taken into account, it was balanced with the evidence as to what happened in relation to the claimant at the time the claimant was treated.

62. **Ms Ezechi** sought to give her evidence in a clear and consistent manner. However, on occasions Ms Ezechi failed to focus on the question and became angry and frustrated. It was clear that Ms Ezechi found it difficult to accept the criticisms the claimant had made of her and failed to recognise the impact of the way in which the claimant (and others) had been managed during their employment and why such an approach could lead to the claim. There were also occasions where Ms Ezechi's evidence was confused and inconsistent. This was carefully taken into account in light of the full context and evidence.

63. There were a number of important and serious inconsistencies in Ms Ezechi's evidence which the Tribunal took time to consider in detail. The Tribunal recognises that giving evidence is not a memory test and on occasion errors can occur. The Tribunal did not consider, on balance, that Ms Ezechi was seeking to mislead the Tribunal but rather she was frustrated at having been challenged and forced to explain what she considered a simple situation to be. Ms Ezechi was of the view that the claimant had failed to follow instructions. Ms Ezechi was angry that her actions had been challenged as being unlawful. On occasions Ms Ezechi had to be reminded to focus on the questions being put to her. Ms Ezechi was forceful in her view and opinion and found it difficult to accept another perspective.

64. The Tribunal was ultimately satisfied that Ms Ezechi had not been influenced in any sense by any protected disclosure or by race. It was clear that Ms Ezechi had a clear view as to how staff should carry out their role and she managed staff accordingly. That created conflict and uncertainty and led in part to the claim. Those are matters on which Ms Ezechi should reflect given the impact the way in which the claimant (and former staff) were treated and how that approach manifested itself. However, the Tribunal found the reasons Ms Ezechi gave for her treatment of the claimant to be genuine and honest.

65. In assessing each of the factual conflicts the Tribunal carefully considered all of the evidence. That included the evidence led by the claimant from a number

of former staff who raised serious complaints about how they felt they had been treated by Ms Ezechi. Those complaints were considered, where relevant, in context. It is notable that no issue had ever been raised with Ms Ezechi or the respondent directly or indirectly. Even upon the departure of the individuals, no attempt was made to raise the concerns which were now raised (whether with Ms Ezechi or the Board).

66. It was clear that the **relationship between Ms Ezechi and the claimant** was not a working professional relationship. It was clear that Ms Ezechi had high expectations and did not deal with individuals who failed to meet those expectations in a positive way. From the evidence before the Tribunal it was clear that when individuals had not carried out an instruction Ms Ezechi had given correctly (or in Ms Ezechi's view correctly) or where Ms Ezechi considered there to be a shortcoming, Ms Ezechi would act in a way that led the individual to feel that they were being treated adversely, rather than in a supportive way. It was clear from the evidence from the claimant and others who had worked with Ms Ezechi that the way in which Ms Ezechi interacted with colleagues whom Ms Ezechi considered to have erred in some way was not a positive experience.

67. As a result of the way in which Ms Ezechi dealt with the shortcomings she perceived in the claimant's performance, the claimant made inferences as to how she was being treated. This affected the working relationship and led the claimant to view workplace interactions through the prism of having been challenged and having been dealt with in a negative (rather than supportive) way. The claimant considered that she was being treated in an offensive and negative way. The claimant also interpreted workplace interactions with Ms Ezechi in a negative fashion as a result of her experience and the Tribunal considered that her recollection was affected by the way in which she had been treated. The Tribunal found that this arose because of the way in which Ms Ezechi conducted herself. That approach created challenges for employees, including the claimant. That approach led the claimant to believe that she was being treated in a certain way, irrespective of the reality of the situation. These issues arose not because of any fault of the claimant but because of the way in which Ms Ezechi managed those who worked for her. It was entirely possible the treatment was offensive and negative but that did not mean the treatment was unlawful.

68. Regrettably the working relationship did not improve and Ms Ezechi decided that she could not continue to work with the claimant. The claimant naturally found the working relationship challenging and drew inferences from work place interactions through that light and in that context.

69. The claimant had alleged that Ms Ezechi had made **stereotypical and offensive remarks** when relaying a story about Arab women on 17 June

2024. Ms Ezechi denied this. Having considered the evidence the Tribunal found that it was more likely than not that the incident had not occurred. The claimant's witness statement was lacking in detail as to precisely what had been said. It was clear that even at this early stage in the relationship the claimant was finding Ms Ezechi's approach to workplace interactions difficult. She viewed discussions and interactions with Ms Ezechi in that light. It was more likely than not that there was a discussion about which the claimant was concerned but not one that she chose to raise formally or informally. The claimant says that Ms Ezechi made remarks she found "personally offensive" but chose not to raise the issue or place a marker as to her view. Ms Ezechi denied making any negative remarks about Arab people noting that the service exists to support all cultures and ethnicities and that a Board member was Arab. The Tribunal found Ms Ezechi's evidence on this point to be preferable and found that it was more likely than not that a discussion took place but not one which was discriminatory in relation to Arab people.

70. The next dispute arose in relation to a **consent form.** The claimant alleges that Ms Ezechi "publicly scrutinised and criticised her in front of service users and Ms Dickson regarding a consent form in August 2024". Ms Ezechi denied that this incident happened. On balance the Tribunal found that there had been no public criticism of the claimant as alleged. It was more likely than not that there was a discission as between the claimant and Ms Ezechi and one in which both parties had been frustrated. It was more likely than not that the claimant had viewed the way in which Ms Ezechi spoke to her as being critical and adverse. It was likely that Ms Ezechi had been short with the claimant and had not realised how her behaviour and the way in which she interacted could land with the recipient. This was not something that the claimant raised at the time – formally or informally. There was a lack of detail, both from the claimant and Ms Dickson, as to precisely what it was that the claimant was said to have been criticised about. The form in question had been created by the claimant and no issue had arisen about it. It was a form with which the claimant was familiar. The Tribunal considered this to be another example of the way in which Ms Ezechi spoke with staff, and how the claimant interpreted the interaction, rather than a public criticism as asserted.

71. Another example of the different interpretations placed upon events was seen with regard to the **Christmas gift duplication**. Ms Ezechi considered this to have been the fault of the claimant but Ms Dickson and the claimant considered that Ms Ezechi bore responsibility. Ms Ezechi considered that the claimant ought to have been in control of matters and liaising with Ms Dickson and Ms Ezechi to avoid duplication. This was an oversight which Ms Ezechi viewed as another example of a shortcoming and acted accordingly.

72. The next dispute was in relation to alleged **discouraging remarks Ms Ezechi was said to have made about the claimant's career prospects**, stating that her ethnicity was a barrier. Ms Ezechi denied this happened. On balance the Tribunal found that there was likely to have been a discussion about the claimant and her career prospects but not that the claimant's ethnicity was a barrier. It was more likely than not that the claimant believed that Ms Ezechi had an issue with the claimant and her ethnicity. The Tribunal did not consider on balance that Ms Ezechi did make any reference to the claimant's ethnicity in a negative way as believed by the claimant. This was not a matter raised by the claimant at the time formally or otherwise. Ms Ezechi was the manager of an organisation that existed to support all cultures and ethnicities and worked alongside and supported persons of different ethnicities. From the evidence the Tribunal did not consider the claimant's recollection to be correct and preferred Ms Ezechi's recollection on this point.

73. The way in which the issue as the **temperature in the big room** was dealt with by the claimant and Ms Ezechi demonstrated the issues in this case. The claimant had raised an issue as to the temperature and as to heating. Ms Ezechi believed that the claimant had not been proactive and had failed to check the heating position carefully. Ms Ezechi became extremely frustrated and angry that the claimant had not checked matters. It was clear that Ms Ezechi was angry and her behaviour would have been viewed in a negative way which was not constructive or conducive to good workplace relations. The way in which the claimant dealt with the issue contributed to Ms Ezechi's view that the working relationship was not progressing in a positive way. The context in which these issues occurred resulted in the matter becoming heated and confrontational rather than supportive.

74. The **informal meeting** that took place on 9 December 2024 sent the claimant a clear message that the working relationship was not working well. While the claimant could not understand why Ms Ezechi had reached the conclusions she had, it was clear that Ms Ezechi was not happy with how the claimant had carried out her duties in certain respects. It is regrettable that the respondent failed to set matters out in writing. Good practice would have resulted in the issues that were discussed being clearly documented to avoid any doubt. Regrettably the Tribunal had to rely upon 2 conflicting accounts as to what was said at the meeting. This was not surprising given both parties' perspective and the events that subsequently occurred. While the claimant argued she had raised concerns at this meeting, the Tribunal found on balance that it was more likely than not that the meeting was solely about Ms Ezechi outlining her concerns. The claimant chose to raise matters in writing at a later date. There was no reference to the claimant having raised matters at the meeting (and had she done so it was more likely than not that there

would have been some record of her having done so). The Tribunal preferred Ms Ezechi's recollection as to this meeting to that of the claimant's.

75. The next dispute related to the **duplicate funding application** and a discussion that took place between Ms Ezechi and the claimant which led to Ms Dickson being called. The evidence as to precisely what happened during this interaction was unclear with both Ms Ezechi and the claimant lacking in clarity and detail. That was not surprising given the time that had passed, the lack of contemporaneous detail and the events that occurred subsequently which could have coloured the interpretation of the event. On balance, it was clear that Ms Ezechi considered the issue to be another example of a shortcoming of the claimant and she was angry and frustrated, and her behaviour was likely to have demonstrated these emotions.

76. It would have been clear to the claimant that the working relationship was not operating in a positive way. The claimant viewed the interactions with Ms Ezechi in a negative way. Ms Ezechi was becoming increasingly concerned and viewed the claimant in a negative light as a consequence of Ms Ezechi's belief that the claimant was not carrying out her duties in a way that was acceptable to Ms Ezechi. It was not surprising that the claimant viewed the fact that Ms Ezechi did not require the claimant to attend the singing event in a negative way given the context. It was more likely than not that the claimant had not been excluded from the event, as such, but that the claimant believed she had been. Ms Ezechi had required the claimant to carry out other duties that Ms Ezechi considered more important given the work that required to be carried out.

77. The next dispute related to the **hot water incident.** Ms Ezechi considered that the claimant had fundamentally breached the duty of confidentiality by raising the issue on the WhatsApp group. While it was understandable that the claimant had done so, it was clear that Ms Ezechi considered that by raising the issue of the water, the claimant had told everyone this had become an issue. Ms Ezechi had expected the issue not have been raised with anyone. While seemingly a minor issue, it was abundantly clear that Ms Ezechi considered the claimant's actions to have been fundamentally in breach of her contract. Ms Ezechi was angry that the claimant had raised the issue. The Tribunal had no doubt that this was the final issue which led Ms Ezechi to seek Board approval to terminate the claimant's employment. While in isolation (and in the claimant's view) the issue was minor, and arguably not a breach of contract, when viewed in context from Ms Ezechi's perspective, it was clear that the working relationship had been irreparably damaged and Ms Ezechi could no longer work with the claimant.

78. The Tribunal considered the position advanced by Ms Ezechi that she had not read the emails sent by the claimant around the time of the Christmas party.

While it seemed implausible, the Tribunal considered on balance that Ms Ezechi had been too engaged in work related matters to consider or read the emails the claimant had sent. There was an issue as to Ms Ezechi initially saying she had sent the email as to holiday closure when in fact the email had been sent by the Board member. There was equally an issue with including a volunteer and former employee on the distribution list. Having taken all of the facts into consideration the Tribunal considered that it was more likely than not that Ms Ezechi's evidence was accurate. By this stage (namely 19 December 2024) Ms Ezechbi had already decided that she could no longer work with the claimant and had sought Board approval to terminate the claimant's employment. That decision (and the associated decisions) stemmed solely from Ms Ezechi's determination (rightly or wrongly) that the claimant had failed to follow instructions fully and failed to comply with the respondent's policy and that she had breached confidentiality. Having carefully considered the evidence and context, neither the claimant's disclosures nor race was in any sense a reason for (or a material influence in) Ms Ezechi's decisions.

79. The Tribunal preferred Ms Ezechi's recollection as to the issues at the Christmas party. It was clear that by this stage Ms Ezechi had decided that the claimant's employment could not continue and she was awaiting Board approval for the decision to dismiss. It was more likely than not that Ms Ezechi would have been short with the claimant, emblematic of her frustration with how she had perceived the claimant to have carried out her duties. That is likely to have led the claimant to believe that she had been publicly reprimanded and excluded whereas in reality it was likely Ms Ezechi had been short with her and frustrated.

80. The Tribunal was satisfied the **decision to remove the claimant from the WhatsApp group** was solely because of Ms Ezechi's view as to how the claimant had been carrying out her duties. Ms Ezechi was angry and frustrated because she believed the claimant had not been performing to the standard she expected. The decision to exclude the claimant from the WhatsApp group was because of the claimant's conduct, particularly in relation to the hot water incident. The situation with regard to Ms Dickson was different given Ms Dickson was not an employee of the respondent. The disclosures and race were entirely irrelevant and not part of (or an influence in) those decisions.

81. The Tribunal carefully assessed the position with regard to the **claimant's dismissal**. The Tribunal was satisfied on balance that the sole or principal reason for the dismissal was that set out in the email. This had arisen as a result of the accumulation of the claimant's conduct, when viewed through Ms Ezechi's perspective. While other employers may well have viewed matters

differently, the Tribunal was satisfied Ms Ezechi genuinely considered the claimant to have been incapable of following her instructions correctly, had failed to follow the policy correctly and had breached confidentiality. This was the result of the breakdown in the working relationship as between Ms Ezechi and the claimant. It was in no sense whatsoever due to race or because of any disclosure but due to Ms Exechi's inability to work with the claimant and her belief that the claimant had not carried out instructions correctly.

The law

Burden of proof in discrimination cases

82. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides as follows:

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

83. The section goes on to make it clear that a reference to the Court includes an Employment Tribunal.

84. It is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the Act. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

85. In **Hewage v Grampian Health Board** 2012 IRLR 870 the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in **Igen Limited v Wong** 2005 ICR 931 and was supplemented in **Madarassy v Nomura International Plc** 2007 ICR 867. Although the concept of the shifting burden of proof involves a two stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question.

86. If in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material. It was confirmed by Lord Justice Mummery in the Court of Appeal that it is not always necessary to address the two-stage test sequentially (see **Brown v London Borough of Croydon** 2007 ICR 909). Although it would normally be good practice to apply the two-stage test, it is not an error of law for a Tribunal to proceed straight to the second stage in cases where this does

not prejudice the claimant. In that case, far from prejudicing the claimant, the approach had relieved him of the obligation to establish a prima facie case.

87. The Tribunal took into account **Field v Steve Pye & Co** EAT2021-000357 and **Klonowska v Falck** EAT-2020-000901. The Tribunal was able to make findings in light of the facts found in light of the absence of any reference by the parties to burden of proof. The Tribunal found clear evidence as to the reason why the respondent acted in this case.

Direct discrimination

88. Discrimination is defined in section 13(1) of the Equality Act 2010 as follows: "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."

89. The concept of treatment being less favourable inherently suggests some form of comparison and in such cases section 23(1) applies: "On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case." In other words, the relevant circumstances must not be materially different between the claimant and the comparators, so the comparator must be in the same position as the claimant save in relation to the protected characteristic.

90. The effect of section 23 as a whole is to ensure that any comparison made must be between situations which are genuinely comparable. The case law, however, makes it clear that it is not necessary for a claimant to have an actual comparator to succeed. The comparison can be with a hypothetical person.

91. Further, as the Employment Appeal Tribunal and appellate courts have emphasised in a number of cases, including **Amnesty International v Ahmed** 2009 IRLR 884, in most cases where the conduct in question is not overtly related to [the protected characteristic], the real question is the "reason why" the decision maker acted as he or she did. Answering that question involves consideration of the mental processes (whether conscious or subconscious) of the alleged discriminator, and it may be possible for the Tribunal to make a finding as to the reason why a person acted as he or she did without the need to concern itself with constructing a hypothetical comparator.

92. The basic question in a direct discrimination case is: what are the grounds or reasons for treatment complained of? In **Amnesty International v Ahmed** 2009 IRLR 884 the Employment Appeal Tribunal recognised two different approaches from two (then) House of Lords authorities - (i) in **James v Eastleigh Borough Council** 1990 IRLR 288 and (ii) in **Nagaragan v London Regional Transport** 1999 IRLR 572. In some cases, such as **James**, the grounds or reason for the treatment complained of is inherent in the act itself.

In other cases, such as **Nagaragan**, the act complained of is not discriminatory but is rendered so by discriminatory motivation, being the mental processes (whether conscious or unconscious) which led the alleged discriminator to act in the way that he or she did. The intention is irrelevant once unlawful discrimination is made out. That approach was endorsed in **R (on the application of E) v Governing Body of the Jewish Free School and another** 2009 UKSC 15. The burden of establishing less favourable treatment is on the claimant.

93. The Tribunal should draw appropriate inferences from the conduct of the alleged discriminator and the surrounding circumstances (with the assistance, where necessary, of the burden of proof provisions) – as explained in the Court of Appeal case of **Anya v University of Oxford** 2001 IRLR 377.

94. In **Glasgow City Council v Zafar** 1998 IRLR 36, also a (then) House of Lords case, it was held that it is not enough for the claimant to point to unreasonable behaviour. She must show less favourable treatment, one of whose effective causes was the protected characteristic relied on.

95. In **Shamoon v Chief Constable of the RUC** 2003 IRLR 285, a (then) House of Lords authority, Lord Nichols said that a Tribunal may sometimes be able to avoid arid and confusing debate about the identification of the appropriate comparator by concentrating primarily on why the complainant was treated as she was, and leave the less favourable treatment issue until after they have decided what treatment was afforded. Was it on the prescribed ground or was it for some other reason? If the former, there would usually be no difficulty in deciding whether the treatment afforded the claimant on the prescribed ground was less favourable than afforded to another.

96. The Equality and Human Rights Commission Code notes at paragraph 3.4 that it is more likely an employer's treatment will be less favourable where the treatment puts the worker's at a "clear disadvantage", which could involve being deprived of a choice or excluded from an opportunity. At paragraph 3.5 the Code notes that the worker does not need to experience actual disadvantage (economic or otherwise) as it is enough the worker can reasonably say they would prefer not to be treated differently from the way they were treated. The example given is of a worker who loses their appraisal duties which could be less favourable treatment.

97. It is also important to note that the treatment would be "because of the protected characteristic" if it was "a substantial or effective though not necessarily the sole or intended reason for the treatment" (**R v Commission for Racial Equality** 1984 IRLR 230).

98. Chapter 3 of the Code contains useful guidance in applying the law in this area and the Tribunal had regard to that guidance.

Harassment

99. In terms of section 26(1) of the Equality Act 2010:

> *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 violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B."*

100. It is important to consider the conduct with regard to each element of the statutory test. Whether or not the conduct relied upon is related to the characteristic in question is a matter for the Tribunal to find, making a finding of fact drawing on all the evidence before it (see **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam** EAT 0039/19). The fact that the claimant considers the conduct related to a particular characteristic is not necessarily determinative, nor is a finding about the motivation of the alleged harasser. There must be some basis from the facts found which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in the manner alleged in the claim. In that case the Employment Appeal Tribunal held it is a matter for the Tribunal to determine making a finding of fact drawing on all the evidence before it. There must be some feature of the factual matrix identified by the Tribunal which leads it to the conclusion conduct is related to the protected characteristic and the Tribunal should articulate clearly what feature of the evidence leads it to that conclusion. The Tribunal should consider the matter objectively.

101. For example in **Hartley v Foreign and Commonwealth Office Services** 2016 ICR D17 the Employment Appeal Tribunal held that an Employment Tribunal had failed to carry out the necessary analysis to see whether comments made by the claimant's managers during a performance improvement meeting — accusing her of rudeness and apparently questioning her intelligence when she failed to understand a spreadsheet of comments concerning her performance — were related to her Asperger's syndrome. The Employment Appeal Tribunal emphasised that an Employment Tribunal considering the question posed by section 26(1)(a) must evaluate the evidence in the round, recognising that witnesses "will not readily volunteer" that a remark was related to a protected characteristic. The alleged harasser's knowledge or perception of the victim's protected characteristic is relevant but should not be viewed as in any way conclusive.

Likewise, the alleged harasser's perception of whether his or her conduct relates to the protected characteristic "cannot be conclusive of that question".

102. **Warby v Wunda Group Plc** EAT 0434/11 is authority for the proposition that the conduct should be viewed in context in assessing whether the conduct is related to the protected characteristic. The then President of the Employment Appeal Tribunal, Mr Justice Langstaff, upheld a Tribunal's decision that an employee accused by her superior of having lied about a miscarriage was not subjected to conduct "related to" her sex within the meaning of the sex discrimination provisions then in force. Langstaff P held that context was important and that the tribunal had been entitled to find that the accusation was made in the context of a dispute over a work matter, about which the employer believed that the employee was lying. Thus the conduct complained of was an emphatic complaint about alleged lying; it was not made because of the employee's sex, because she was pregnant or because she had had a miscarriage. While that case considered the predecessor legislation, the issue was whether the conduct was "related to" the protected characteristic.

103. In **Kelly v Covance Laboratories Ltd** [2016] IRLR 338 an instruction not to speak Russian at work, so that any conversations could be understood by English speaking managers was not related to race or national origins, even though it potentially could have been. The conduct was because the employer was suspicious about what was being said and could not understand. Viewed in the context of the company's business and risks the employer's explanation for the conduct was accepted and the conduct was not related to race or national origins.

104. In **UNITE the Union v Nailard** [2018] IRLR 730 the Tribunal had held that a failure to address a sexual harassment complaint made against elected officials of the union could amount to harassment related to sex "because of the background of harassment related to sex". The Court of Appeal considered that went too far. There had been no findings as to the mental processes of the (employed) officials of the union dealing with the complaint and whether they had been motivated by sex discrimination. The Court of Appeal noted that the previous potential liability for third party harassment under the Equality Act 2010, section 40 had been repealed and there was no automatic liability on the part of the union for harassment by third parties (if that was how the elected officials were to be characterised). The union could be (vicariously) liable for acts of discrimination by its employees but there would need to be a finding that the employees in question were themselves guilty of discrimination. An important point of this case was the reminder that Tribunals should focus on the conduct of the person who carried out the act and determine whether that conduct is related to the protected characteristic (not whether the conduct of someone else or some other conduct is related

to the protected characteristic). If the action (or inaction) is because of illness or incompetence it may not relate to the protected characteristic.

105. At paragraph 7.10 of the Code the breadth of the words "related to" is noted and some examples are provided. It gives the example of a female worker who has a relationship with her male manager. On seeing her with another male colleague, the manager suspects she is having an affair. As a result, the manager makes her working life difficult by criticising her work in an offensive manner. The behaviour is not because of the sex of the female worker but because of the suspected affair, which is related to her sex. This could amount to harassment related to sex.

106. At paragraph 7.11 the Code states that in the examples there was "a connection with the protected characteristic".

107. The question of whether the conduct in question "relates to" the protected characteristic requires a consideration of the mental processes of the putative harasser (**GMB v Henderson** 2017 IRLR 340) bearing in mind that there should be an intense focus on the context in which the words or behaviour took place (see **Bakkali v Greater Manchester** 2018 IRLR 906). In **Bakkali** the question was whether a comment as to whether an individual was said to be still promoting ISIS/Daesh was related to race. The Tribunal found it was not as it related to a previous conversation. The Employment Appeal Tribunal emphasised that context is important and the words used must be seen in context. In considering whether the conduct is related to the protected characteristic there should be an intense focus on the context of the offending words or behaviour. The mental processes of the perpetrator are relevant in assessing the issue.

108. In **Raj v Capita** 2019 UKEAT 0074/2019 the Employment Appeal Tribunal upheld a Tribunal which had found that the massage at his desk by a manager was not conduct related to sex. The conduct was misguided encouragement by a manager. It was an isolated incident and the context was key: a standing manager over a sitting team member in a gender neutral part within an open plan office. In that case the Tribunal did not expressly consider the burden of proof provisions but had found that the conduct was in no sense whatsoever related to sex.

109. Recent guidance in relation to "related" to can be found in **Carozzi v University of Hertfordshire** 2024 EAT 169 in which it is stated that "the term "related to" is designed to have a relatively broad meaning. The harassment provisions are designed to be pragmatic, balancing the interests of employees against those of their employer and colleagues who may be accused of harassment. That balance is not achieved by applying a limited meaning to the words "conduct related to a protected characteristic". The limitations are

that the conduct must be unwanted and it must have the purpose or effect of violating dignity. Where the conduct has that effect, but not that purpose, the Employment Tribunal will go on to consider the perception of B, the other circumstances and whether it is reasonable for the conduct to have that effect. Employers and employees can be expected to take greater care in how they speak and behave at work than they might in their social life. While it is in no-one's interest that colleagues should constantly be walking on egg-shells, it is also important that proper protection is provided against violation of dignity at work".

110. Limitations to the test are noted in **Windsor Clive v Forsbrook** 2024 EAT 183 where at paragraph 29 the Employment Appeal Tribunal noted that "It is clear that "related to" is a broad concept, as set out in **Haringey**. However, the concept cannot be so broad as to be meaningless. I am of the view that, as Ms Roddick argues, the conduct must relate to the protected characteristic, here disability, in some clear way. It is for the ET to spell out that relationship between the conduct and the disability. It will be necessary, therefore, for an ET to identify with some clarity the precise conduct which creates the prohibited environment. This will also be true in deciding whether that conduct is unwanted in the sense that the statute applies to it."

111. Section 26(4) of the Act provides that:

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

(a) the perception of B;

(b) the other circumstances of the case;

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

112. The terms of the statute are reasonably clear, but guidance was given by the Court of Appeal in **Pemberton v Inwood** 2018 IRLR 542 in which the following was stated by Lord Justice Underhill: "In order to decide whether any conduct falling within sub-paragraph 10 (1)(a) of section 26 Equality Act 2010 has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b))."

113. The Code states (at paragraph 7.18) that in deciding whether or not conduct has the relevant effects account must be taken of the claimant's perception

and personal circumstances (which includes their mental health and the environment) and whether it is reasonable for conduct to have that effect. In assessing reasonableness an objective test must be applied. Thus, something is not likely to be considered to be reasonable if a claimant is hypersensitive or other people are unlikely to be offended.

114. In relation to the effect of the conduct, intention is not a prerequisite and the effect is to be considered from the perception of the claimant. The Code (at paragraph 8.20) gives the example of a club manager at a meeting making derogatory comments and jokes about women to a mixed sex audience. It is not that person's intention to offend or humiliate anyone, however the contact may amount to harassment if the effect of it is to create a humiliating or offensive environment for a man or woman in the audience.

115. Relevant circumstances include the claimant's personal circumstances, cultural norms and previous experience of harassment. The perpetrator being in a position of trust or seniority over the recipient is also a relevant factor.

116. Further as Underhill LJ stated above when deciding whether the conduct has the relevant effects (of violating the claimant's dignity or creating the relevant environment) the claimant's perception and all the circumstances must be taken into account and whether it is reasonable for the conduct to have the effect (**Lindsay v LSE** 2014 IRLR 218). Elias LJ **in Land Registry v Grant** 2011 IRLR 748 focused on the words "intimidating, hostile, degrading, humiliating and offensive" and said "Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upset being caught".

117. Chapter 7 of the Code contains useful guidance in applying the law in this area and we have had regard to that guidance.

Protected disclosure

118. Under Section 43A Employment Rights Act 1996, a protected disclosure is a qualifying disclosure made by a worker to their employer or other responsible person (Section 43C) or to a prescribed person (Section 43F).

Detriment

119. Under Section 47B a worker has the right not to be subjected to any detriment by an act, or deliberate failure to act, by his employer (or a fellow worker in the course of their employment) because the worker has made a protected disclosure. A detriment is a reasonably perceived disadvantage (**Shamoon v Chief Constable of the Royal Ulster Constabulary** 2003 ICR 337). It may arise from a deliberate failure to act which occurs when it is decided upon.

Detriment is to be construed widely, there being a low threshold (see **Edinburgh Mela v Purnell** EAT/41/19).

120. For a complaint of detriment, the protected disclosure must be a material (i.e. more than minor or trivial) influence on the employer's treatment of the whistleblower. The actor (or their manipulator) must have knowledge of the protected disclosure (**Royal Mail Group Ltd v Jhuti** [2020] 20 ICR 731).

121. The reason for the detrimental treatment may be the means or manner of disclosure rather than the act of disclosure itself but such a distinction must be scrutinised carefully. This has been considered in a number of cases including **Shinwari v Vue Entertainment** UKEAT/0394/14, **Panayiotou v Kernaghan** 2014 IRLR 500 and **Parsons v Airplus** EAT/111/17. It is not unlawful if the reason for the treatment was the way in which the employee made the disclosure but a Tribunal should consider the evidence carefully in assessing whether the treatment was influenced by a disclosure.

122. Under Section 48(2) it is for the employer to show the reason for the detrimental treatment. The claimant must first prove on the balance of probabilities that there was a protected disclosure, a detriment and basis upon which it could be inferred that the protected disclosure was a reason for the treatment. Accordingly, the employee must provide sufficient evidence for a basis to suggest the disclosure could be a reason for the treatment (**International Petroleum Ltd v Osipov & Ors** UKEAT/0058/17/DA). The burden then shifts to the employer to show the reason for the detrimental treatment. In the absence of a satisfactory explanation from the employer which discharges that burden, Tribunals may, but are not required to, draw an adverse inference.

123. The test is whether the disclosure materially influences the treatment, in the sense of being more than a trivial influence of the treatment. In **Fecitt v Manchester** 2012 ICR 372 Lord Justice Elias said liability arises if the protected disclosure if "a material factor in the employer's decision to subject the claimant to a detrimental act". The test was recently noted in **Dr Moghaddam v University of Oxford** 2024 EAT 156 (see paragraph 23).

124. The decision maker ought to have the same knowledge of what the claimant is concerned about for the employer to be liable (**Nicol v World** 2024 EAT 42 and **William v Lewisham** 2024 EAT 58).

Automatic unfair dismissal

125. In terms of section 103A of the Employment Rights Act 1996, if the sole or principal reason for a dismissal is that the claimant had made a protected and qualifying disclosure, the dismissal is automatically unfair. That differs from

detriment cases (where the test is whether the treatment was materially influenced (in a more than trivial way) by a disclosure).

126. Although the claimant does not have the burden of establishing that the reason (or principal reason) for dismissal was her making protected disclosures, she must produce some evidence to support her case (**Kuzel v Roche Products Ltd** [2008] ICR 799).

127. The principal reason for the dismissal is "a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee" (**Abernethy v Mott, Hay and Anderson** [1974] ICR 323). The focus must be on the knowledge, or state of mind, of the person who actually took the decision to dismiss, as observed by the Supreme Court in **Royal Mail Group Ltd v Jhuti** [2019] UKSC 55, at paragraph 60 and **Beatt v Croydon Health Services NHS Trust** [2017] IRLR 748.

128. This approach of focussing the factors operating on the minds of the person or persons who made the decision to dismiss applies to both s.103A dismissal claims and s.47B detriments claims: **The Co-Operative Group Ltd v Baddeley** [2014] EWCA Civ 658, 15 May 2014, unreported (citated immediately above) at 41.

129. For employers to be fixed with liability they ought to have some knowledge of what the worker is complaining or expressing concerns about (**Nicol v. World Travel and Tourism Council and ors** [2024] EAT 42). However, if a person in the hierarchy of responsibility above the employee determined that the employee should be dismissed for a reason, but hid it behind an invented reason which the decision-maker adopted, it is the tribunal's duty to penetrate through the invention rather than to allow it also to infect its own determination. The reason for the dismissal was the hidden reason rather than the invented reason (**Royal Mail Ltd. v. Jhuti** [2019] UKSC 55).

130. In **William v Lewisham and Greenwich NHS Trust** [2024] EAT 58, the Employment Appeal Tribunal considered its decision in **Malik v Centros Securities** EAT/0100/17 in the light of the Supreme Court's decision in **Jhuti**. In **Malik** the claimant had argued that even if the person responsible for detrimental treatment in a claim under s. 47B did not know of the disclosures and therefore could not be materially influenced by them, their treatment of him was influenced by someone else who did have that knowledge and who was influenced by the disclosures, and therefore the disclosures materially influenced the decision. The EAT, in **Malik**, held that under s. 47B "importing knowledge and motivation of another to that decision maker … is not permissible in considering why the decision maker acted as he or she did.". The EAT held that **Malik** should be followed and the decision in **Jhuti** did not purport to change and did not logically change the interpretation of s. 47B.

131. In **Nichol v World Travel and Tourism Council and Others** [2024 EAT 42, the EAT considered the extent to which a decision maker must have knowledge of a protected disclosure if they were not the immediate recipient of it. It was held, "For employers to be fixed with liability, therefore, they ought to know at least something about the substance of what has been made: that they ought to have some knowledge of what the employee is complaining or expressing concerns about."

Submissions

132. The respondent had provided written submissions in advance which the claimant had the opportunity to consider. Both parties were able to spend time going through each of the issues and discussing their respective positions.

Discussion and decision

133. The Tribunal approached each issue individually in light of the evidence and applicable law. The Tribunal now deals with each of the issues in turn.

Direct race discrimination

134. In this complaint, the claimant is Arab compares herself with people who are black (African) and White. The first issue is to determine whether the treatment relied upon had been established in evidence.

135. The **first act** was that "between September and November 2024, in one-to-one conversations, the respondent made discouraging remarks to the claimant about career progression, implying her ethnicity was a barrier". This had not been established in evidence.

136. The **second act** was that "on 23 December 2024, the respondent dismissed the claimant for failing to log donated items". The dismissal had been established in evidence (which had been for the 3 reasons given in the email).

137. The **third act** was that "on 11 December 2024, the respondent subjected the claimant to an aggressive and humiliating interaction regarding the alleged duplication of funding applications". A discussion had taken place on 11 December 2024 as to duplicate applications as set out above.

138. The **fourth act** was that "on 20 December 2024, around midnight, the claimant was removed from the work WhatsApp group and her email access was blocked without explanation". This had been established in evidence.

Was the treatment less favourable treatment?

139. For the treatment that had been established, the next step is to assess whether the treatment was less favourable treatment. The Tribunal requires to 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 a black colleague or a hypothetical comparator.

140. The acts that been established were the claimant's dismissal, the discussion as to duplicate funding application and the removal of the claimant from the respondent's systems. The Tribunal considered these in turn.

141. With regard to **dismissal**, there was no evidence before the Tribunal that showed that anyone else who had failed to log donated items (and had breached confidentiality and failed to follow Ms Ezechi's instructions) would not have been treated in the same way. No person had done what the claimant had done. The claimant was dismissed because of the 3 things set out in the dismissal email, not solely for failing to log the donated items. The dismissal was not less favourable treatment since a comparator whose circumstances did not materially differ from the claimant would have been treated in precisely the same way.

142. With regard to the **discussion around the duplicate funding applications**, from the evidence before this Tribunal, had there been any other employee who had duplicated the finding application as the circumstances showed in this case, it was clear that Ms Ezechi would have treated them in precisely the same way. No other employee had done what the claimant had done. It was clear that Ms Ezechi viewed failure to carry out one's role without errors and mistakes ruthlessly. It was clear that if an employee had failed to do what Ms Ezechi expected she would become angry and frustrated. There was no evidence that anyone else who had made the same error as the claimant, whose circumstances were materially the same, would have been treated in a positive way. It was clear that Ms Ezechi's way of dealing with errors was to become frustrated and angry which was clear from the way she dealt with the author of such behaviour. The treatment was not less favourable treatment.

143. With regard to **removal from the respondent's systems**, the Tribunal was satisfied that any employee who had acted as the claimant had would have been treated in the same way. Ms Dickson had initially been removed from the WhatsApp discussion but had been readmitted. Ms Dickson was not an employee of the respondent. No other employee had done what the claimant had done. Any employee whose circumstances did not materially differ from the claimant's, would have been treated in precisely the same way as the claimant was treated. Ms Ezechi was angry that the claimant had used WhatsApp to raise the issue of the hot water, which Ms Ezechi considered to be confidential. Had Ms Ezechi raised the same issue with any other employee who had then asked the same question as the claimant did on

WhatsApp, Ms Ezechi would have similarly removed them from the WhatsApp group. This was not therefore less favourable treatment.

144. The Tribunal carefully considered each of the treatment relied upon in turn and concluded from the evidence before it that the treatment was not less favourable treatment. Any employee whose circumstances were not materially different from the claimant (who was not Arabian) would have been treated in the same way.

The reason why question

145. Had it been necessary to do so, the Tribunal would have found that the reason for each of the acts in question was in no sense whatsoever race. Even if the Tribunal had accepted that the claimant had proven facts from which race could be a reason for the treatment, from a careful analysis of the treatment in this case, the respondent had discharged the onus of showing that race was in no sense a reason for the treatment relied upon. Race was entirely irrelevant and unconnected to Ms Ezechi's reason for acting in relation to the claimant. Ms Ezechi was angry and frustrated at her perceived view of the claimant's inability to carry out her role to the standard expected and follow instructions. Race was entirely unconnected to the reason why Ms Ezechi conducted herself in the way that she did in each case.

146. **Taking a step back**, the Tribunal found no evidence to support the assertion any of the treatment was because of race. Race was irrelevant. A person who was not Arabic would have been treated in the same way as the claimant was treated. There was no direct race discrimination. That complaint is ill founded.

Harassment related to race

147. The **first act** was that "on 20 December 2024 Ms Ezechi publicly reprimanded the claimant at a Christmas event". This had not been established in evidence. While the claimant perceived that she had been treated badly at the Christmas party, on balance she had not been publicly reprimanded. Even if the conduct had been established, the treatment was not related to race. Race was in any event entirely unrelated to how Ms Ezechi treated the claimant for the reasons given above. The sole reason for Ms Ezechi's approach to the claimant on 20 December 2024 was her firm belief that the claimant was not following instructions properly. The treatment was not related to race at all.

148. The **second act** was that "in August 2024 Ms Ezechi publicly scrutinised and criticised the claimant whilst the claimant was handling a consent form for a service user". This assertion had not been established in evidence. The Tribunal was satisfied no issue arose with regard to the consent form. Again the working relationship as between Ms Ezechi and the claimant had deteriorated and the claimant viewed workplace interactions with her

manager as stressful and negative. Ms Ezechi had become frustrated with how she perceived the claimant to be carrying out her role but the Tribunal did not find that the claimant had been criticised in August 2024 with regard ot the consent form (which the claimant had created and what had been used before and no issue arose with regard to the form). The way in which Ms Ezechi acted towards the claimant in August 2024 was entirely unconnected to and in no way related to race.

149. The **third act** was that "on 17 June 2024 in the presence of the claimant and a colleague, Ms Ezechi made stereotypical and offensive remarks about Arab women, implying they were fearful of men and uneducated". The Tribunal had carefully considered this allegation and found on balance that the comment had not been made by Ms Ezechi. The Tribunal preferred Ms Ezechi's position to that of the claimant and her witnesses. While there was likely to have been workplace discussions, the Tribunal considered that Ms Ezechi had not made the discriminatory comments in relation to Arab women. While a number o people alleged this had been said (in the course of this claim), no issue had been raised with regard to the comment at the time with anyone. The Tribunal that is was more likely than not that Ms Exechi's position was what had occurred. While there may have been a negative action (or comments perceived as adverse or negative) the Tribunal did not find that on the balance of probabilities the comments about Arab women had been said. The Tribunal found that the discussion that took place was not related to race.

150. Then **fourth act** was that "between September and November 2024, in one-to-one conversations, the respondent made discouraging remarks to the claimant about career progression, implying her ethnicity was a barrier". This had not been established in evidence. While there had been discussions as between Ms Ezechi and the claimant, the Tribunal preferred Ms Ezechi's account that there had been no such discussion suggesting the claimant's ethnicity was a barrier in a negative or pejorative way. The discussion that took place was not related to race. At its highest the claimant did not like the discussion and comments from Ms Ezechi about her career, but the Tribunal did not find, on balance, any comments about ethnicity to have been said.

151. The **fifth act** was that "on 11 December 2024, the respondent subjected the claimant to an aggressive and humiliating interaction regarding the alleged duplication of funding applications". A discussion had taken place on 11 December 2024 as to duplication of funding applications. The discussion as to duplication of funding was unwanted as the claimant believed she had not done anything wrong. The discussion was not, however, related to race in any way. The discussion was about an application was made twice which resulted in the respondent's application being refused. It was not related to race.

152. The conduct also did not have as its purpose violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The sole purpose was to explain to the claimant the importance of avoiding duplication.

153. The conduct did not have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant was upset and angry at being held responsible but the effect of the discussion was not to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her and it would not have been reasonable for that to have been the case given the context and circumstances.

154. The **final act** was that "on 20 December 2024, around midnight, the claimant was removed from the work WhatsApp group and her email access was blocked without explanation". This had been established. The removal of the claimant from the WhatsApp discussion (and systems) was unwanted conduct. The decision to remove the claimant from the discussion and systems was not in any way related to race. The decision was taken because Ms Ezechi was angry the claimant had breached confidentiality and used the WhatsApp group to ask about the water temperature. Ms Ezechi was unhappy with how the claimant had acted and was considering dismissal (and seeking Board approval). There was no connection at all to race, and race was entirely irrelevant to the acts of Ms Ezechi.

155. The purpose of the acts was not to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The sole purpose was to reduce the risk of the claimant using the WhatsApp platform to raise any other issues and to remove her from the respondent systems (given her impending dismissal).

156. The conduct did not have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant was angry at being removed but the effect of the discussion was not to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her and it would not have been reasonable for that to have been the case given the context and circumstances. The conduct stemmed from what the claimant had done, which was to seek information from others in relation to the issue Ms Ezechi had raised. On balance it would not have been reasonable for the conduct to have had the proscribed effect in context.

Taking a step back

157. The Tribunal assessed the relevant acts relied upon and considered their purpose and the effect, including the actual effect upon the clamant and whether it was reasonable for those effects to have been found. Having assessed the evidence before it and applied the law, the Tribunal concluded that none of the unwanted acts relied upon by the claimant related to a protected characteristic and that even if they did, the proscribed effects had not resulted from the conduct (and it would not have been reasonable for that to have been the effect from the evidence). The harassment complaint is ill founded and it is dismissed.

Protected disclosures

158. The first issue is to determine whether or not the claimant made one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996.

159. The **first disclosure** was that the claimant submitted a written disclosure via email to her manager on 19 December 2024, raising significant health and safety concerns within the premises. This was conceded to be a protected and qualifying disclosure.

160. The **second disclosure** was that between June and August 2024, the claimant raised underpayment concerns. This was also conceded to amount to a protected and qualifying disclosure.

161. The **third disclosure** was that on 9 December 2024, the claimant raised concerns about disrespectful treatment. The Tribunal did not find that the claimant had raised an concerns during the meeting. This had not been established in evidence.

Detriments

162. The **first act** relied upon as detrimental treatment was that on or around 20 December 2024 the claimant was excluded or removed from all internal workplace communication without warning or explanation (which was said to be because of the first disclosure). The conduct had been established in evidence. Removing the claimant from the respondent's systems was a detriment. The sole reason for Ms Ezechi's decision to remove the claimant from the respondent's systems on or around 20 December 2024 was because Ms Ezechi believed the claimant had breached confidentiality and Ms Ezechi was seeking Board approval to dismiss the claimant. Ms Ezechi was angry that the claimant had chosen to use WhatsApp to raise the issue as to hot water and disclose to all of the group the issue Ms Ezechi believed she had raised in confidence with the claimant.

163. The disclosure made by the claimant on 19 December 2024 which is relied upon as the reason for this treatment had not been read by Ms Ezechi prior to her decision to remove the claimant from the systems. It could not therefore have been a reason for the treatment. Having assessed the evidence, the Tribunal is satisfied the disclosure had no influence upon the treatment.

164. The **second act** relied upon was that "the claimant was ignored when she attempted to contact Ms Ezechi for clarification" (which was also said to be because of the first disclosure). The Tribunal found that Ms Ezechi had not responded to the claimant because she was angry that the claimant had, in her view, breached confidentiality. Ms Ezechi was considering terminating the claimant's employment as a result of the accumulation of the events which Ms Ezechi considered to amount to failure to follow instructions, the respondent's policies and this breach of confidentiality. That was the only reason why Ms Ezechi chose not to engage further with the claimant at this juncture. She was awaiting Board approval to proceed with dismissal and was working on a draft communication with a Board member. The disclosure relied upon had no influence at all in relation to the decision. In any event the Tribunal accepted Ms Ezechi's evidence that she had not read the letter containing the disclosure prior to making the decision and so it could not have influenced her decision in any way.

165. The claimant had also argued that the contrast in treatment between the claimant and Ms Dickson was "telling" as the claimant was ignored and yet Ms Dickson was reinstated. The Tribunal found that Ms Dickson was in an entirely different position to that of the claimant. Ms Dickson was not an employee of the respondent. She worked with the respondent but was employed by a third party. Ms Dickson had also not (in Ms Ezechi's view) done anything wrong in terms of posting on WhatsApp, unlike the claimant who had posted about the water temperature (which was considered to fundamentally breach confidentiality). Ms Dickson was therefore in an entirely different position. The only reason the claimant was removed from the respondent systems (and Ms Ezechi did not engage with her) was because Ms Ezechi believed the claimant had breached her duties as an employee. Ms Ezechi was in the process of seeking Board approval to dismiss the claimant and did not engage in further communication. The first disclosure the claimant made was the email of 19 December 2024. This had not been read by Ms Ezechi when she took the decision to remove the claimant from the respondent's systems (and not engage with her). The disclosure in no sense influenced Ms Ezechi's behaviour in this regard.

166. The **third act** relied upon was "an increased level of hostility perpetrated by Ms Ezechi against the claimant" following the third disclosure. The Tribunal found no evidence that hostility had increased as alleged in this complaint. It

was clear that the working relationship as between Ms Ezechi and the claimant had been deteriorating for some time. Ms Ezechi was frustrated that that the claimant (in Ms Ezechi's mind) had not been performing to the level needed. The third disclosure had not been established as no issue had been raised by the claimant at the meeting on 9 December 2024. The only reason why Ms Ezechi was frustrated and angry was because she believed the claimant had failed to follow instructions and comply with the respondent's policies. The meeting of 9 December 2024 had no influence on the treatment.

167. The **fourth act** was that on 11 December 2024 the claimant was wrongly accused by Ms Ezechi of duplicating a funding application (which was also said to be because of the third disclosure). Ms Ezechi believed that the claimant had been at fault although the claimant disputed she had done anything wrong. Being accused of wrongly duplicating the form was not a detriment given the claimant erred. While the claimant (and Ms Dickson) may believe Ms Ezechi was responsible, it was clear that duplication had occurred and could have been avoided by better communication. It was an error and mistakes happen. Accusing the claimant of making a mistake was a not detriment. Ms Ezechi had accused the claimant of duplicating the application because that was what she believed. The disclosure had not been established. In any event the meeting of 9 December 2024 no influence at all upon the treatment and had no influence upon the treatment.

168. The **fifth act** was "exclusion from communication during key events, including the singing event on 18 December 2024 and on 20 December 2024 the Christmas party (said also to be because of the third disclosure)". The Tribunal found that the claimant had not been excluded from key events. Ms Ezechi required the claimant to carry out the tasks required. The disclosure relied upon for this complaint had not been established since the claimant had not raised any issues during the meeting. In any event the disclosures had no influence upon the treatment. Ms Ezechi had asked the claimant to carry out the tasks that required to be completed. The disclosure did not influence the decision in any way.

169. The **sixth act** was that on 18 December 2024 the claimant was accused by Ms Ezechi of serving cold water that could poison service users (which was said to be because of the third disclosure). Having considered what Ms Ezechi said to the claimant about the water, the Tribunal concluded that there was no detrimental treatment. Ms Ezechi had received complaints about the temperature of the water and she was concerned how that could impact upon service users. Communicating that information to the claimant was not reasonably considered disadvantageous or detrimental. While the claimant disputed the veracity of the complaint, it was clearly necessary to investigate

the matter and raise it with the claimant (given potential risks to health and safety if the complaint had merit).

170. Even if the treatment was detrimental, the disclosure relied upon had not been established. Further, the only reason Ms Ezechi raised the issue with the claimant was because she believed the water had been at the wrong temperature. The meeting had no influence upon the treatment.

171. The **penultimate act** relied upon was that "Ms Ezechi's behaviour towards the claimant suddenly became increasingly cold, dismissive, and hostile following the disclosure of unresolved pay concerns" (said to be because of the second disclosure). The Tribunal had found no evidence that Ms Ezechi's behaviour had suddenly become increasingly cold dismissive and hostile. The allegation had not been established from the evidence. The Tribunal found that Ms Ezechi became increasingly frustrated because of her belief the claimant was not performing to the standard she expected of staff. Ms Ezechi was frustrated when the claimant failed to (in Ms Ezechi's view) understand an instruction or follow the respondent's policies There was no evidence of her behaviour suddenly changing following the claimant raising pay concerns. Ms Ezechi confirmed that the working hours were as per the contract and any overtime should be pre-approved. The claimant's contractual hours were increased. There was no evidence to support the assertion Ms Ezechi's behaviour changed following the claimant's raising of the pay concerns.

172. The Tribunal found no link between the unresolved pay concerns and the behaviour of Ms Ezechi. Ms Ezechi's treatment of the claimant was solely because of her view that the claimant was not carrying out her role to the required standard. There was no link whatsoever to any disclosure (including the second disclosure). The disclosures had no influence upon the treatment.

173. The **final act** was "the respondent questioned the claimant's commitment and professionalism, sometimes publicly" (which was said to because of the second disclosure). The Tribunal found no evidence to support the assertion that Ms Ezechi "questioned the claimant's commitment and professionalism, sometimes publicly". The working relationship had deteriorated but the Tribunal found no evidence that the claimant's commitment and professional was questioned publicly or otherwise. Ms Ezechi was frustrated as she believed the claimant was not following instructions nor acting in accordance with the respondent's policies. The way in which Ms Ezechi acted towards the claimant was in no sense related to any disclosure the claimant had made. The second disclosure had no influence at all upon the treatment.

174. There were no detriments the claimant suffered because of a protected disclosure and this complaint is ill founded.

Automatic unfair dismissal

175. The issue in this complaint is whether the principal or sole reason for the claimant's dismissal because of a protected and qualifying disclosure. The Tribunal is satisfied the disclosures made by the claimant (individually or cumulatively) were not the sole or principal reason for the dismissal. The respondent had shown that the only reason for the dismissal was Ms Ezechi's view that the claimant had failed to follow her instructions, breached confidentiality and failed to follow company policy. The disclosures were not in any way a part of the decision taken to dismiss the claimant.

176. The claimant argued that the proximity in time as between the disclosures and the dismissal together with the inconsistencies in Ms Ezechi's evidence supported their argument. The Tribunal took these matters into account in assessing Ms Ezechi's evidence and assessing the reason for the dismissal. On balance, the Tribunal was satisfied that the disclosures relied upon were not the sole or principal reason for the dismissal and the Tribunal accepted the evidence of Ms Ezechi as to the principal reason for the claimant's dismissal. The claimant's dismissal was not automatically unfair.

Date sent to parties 2 September 2025