



EMPLOYMENT TRIBUNALS

Claimant

Ms R Tapping

Respondent

Peterborough City Council

v

Heard at: Cambridge (in person)

On: 15, 16, 17, 18, 21, 22, 23, 28, 29, 30, 31 July 2025
4, 5, 6, 7, 8 August 2025

Chambers Discussions: 28 August 2025
1 and 2 September 2025
3 October (am) and 16 October (pm) 2025

Before: Employment Judge Tynan

Members: Ms S Jenkins and Ms M Harris

Appearances

For the Claimant: Ms E Banton, Counsel

For the Respondent: Mr R Dennis, Counsel

RESERVED JUDGMENT

1. The following complaints of harassment related to race are well-founded and succeed:
 - a. In February 2023, by Mr Gladstone asking the Claimant and Ms Omoregie if they were friends (Detriment 2); and
 - b. On 11 April 2023, by Ms Booth sending a photograph of what may have appeared to the recipients to be a naked black woman to the CLT WhatsApp group (Detriment 17).
2. The Claimant's other complaints that she was discriminated against contrary to sections 13, 26 and 27 of the Equality Act 2010 are not well-founded and are dismissed.

REASONS

Background

3. In the course of these reasons we mainly refer to the Respondent as “Peterborough”, though occasionally “the City Council”. We have avoided referring to it simply as ‘the Council’ in order to avoid confusing it with its elected members who are referred to collectively as ‘full Council’ and individually as “councillors”.
4. In June 2021 the Government commissioned an external assurance review of Peterborough, including its financial position and wider governance arrangements. This resulted in the City Council being placed at the lowest level of non-statutory intervention due to the financial issues it was then experiencing. As part of this process, an Independent Improvement and Assurance Panel (the “Improvement Panel”) was set up to help support Peterborough’s progress and ensure monthly reporting back to the Government. Around the same time, the Chartered Institute of Public Finance and Accountancy (“CIPFA”) and the Local Government Association undertook reviews which concluded that Peterborough required improvement in the three key areas of financial sustainability, culture and governance. In its report, CIPFA recommended improved oversight of Peterborough’s commercial entities and that a single senior officer at Peterborough should hold the role of corporate shareholder.
5. The Claimant was employed by the Respondent as its Director of Legal and Governance from 14 November 2022 until 31 August 2023 when its elected members voted to approve a recommendation by its Chief Executive, Matthew Gladstone, endorsed by an Independent Panel of three Independent Persons, that she be dismissed for failing her probation period.
6. The Claimant is described in the List of Issues as black and of Jamaican and Caribbean national and / or ethnic origin. Throughout Ms Banton’s cross examination of the Respondent’s witnesses and in her closing submissions, she referred only to the Claimant’s colour. We follow her lead in the matter, albeit without losing sight of the Claimant’s ethnicity.
7. The Claimant was Peterborough’s appointed Monitoring Officer. The role of Monitoring Officer in a local authority is a statutory one. The holder is responsible for ensuring the authority, its officers and elected members adhere to the highest standards of conduct. It is one of three statutory officer roles, the others being the Head of Paid Service (Mr Gladstone) and the Chief Finance Officer. The officers are expected to work together to ensure good administrative, financial and ethical governance of their authority. They are commonly known as the ‘Golden Triangle’.
8. As Director of Legal and Governance, the Claimant was also a member of Peterborough’s Corporate Leadership Team (“the CLT”). It seems that

there was a healthy gender balance on the CLT. However, whilst we heard that minority ethnic individuals attended enlarged CLT meetings from time to time, including when deputising for colleagues, the Claimant was the only, and seemingly the first, black person to be appointed to the Monitoring Officer role at Peterborough and possibly also the first black permanent appointment to a CLT position, or certainly the first in some years. The other non-white member at the time was Jyoti Atri, whose position differed slightly in so far she was the joint Director of Public Health for Cambridgeshire County Council and Peterborough City Council, her combined roles meaning that she was physically present in Peterborough less often than her colleagues and effectively worked part time for Peterborough.

9. The Claimant evidently made a positive impression on all those who met her during her recruitment process. Mandy Pullen, the Respondent's Service Director with responsibility for People & Development Services described the Claimant at Tribunal as "a breath of fresh air" and "exactly what Peterborough needed".
10. In summary, the Claimant's case is that her 'cards were marked' from the outset of her employment with the Respondent, after Mr Gladstone and Ms Pullen were made aware that she was in dispute with her former employer, Birmingham City Council ("Birmingham") and was alleging that it had racially discriminated against her. The Respondent says that her case makes no sense; that she claims to have been subjected to a hostile environment even whilst being recruited to join the Respondent and that her claim to have been subjected to a "racist hostile working environment" orchestrated by Mr Gladstone is at odds with her acceptance at trial that he was fully supportive of her appointment.

The Issues and Evidence

11. An updated Hearing Bundle was filed in the course of the final hearing to reflect ongoing additional disclosures during the hearing itself. It extends to 4,648 numbered pages ("the Bundle"). There was also a Claimant's Supplementary Bundle ("Supplementary Bundle") that originally ran to some 189 numbered pages but with additions now comprises 302 numbered pages. Unless otherwise indicated, any page references are to documents in the Bundle.
12. Our reasons are structured with reference to an Agreed List of Issues at pages 1 – 9 of the Bundle which details 43 matters that are said to amount to unfavourable and / or detrimental treatment of the Claimant, and /or unwanted conduct on prohibited grounds. We were due to hear a contested application by the Claimant to amend her claim to add one or more further detriments, though in the event the contested elements of the application were not pursued on the basis instead that the Claimant invites the Tribunal to draw adverse inferences from the Respondent's alleged failure to comply with the provisions of the "JNC". The List of Issues was

updated accordingly. “JNC” stands for Joint Negotiating Committee. There is a Joint Negotiating Committee for Local Authority Chief Executives’ “National Salary Framework & Conditions of Service” and a Joint Negotiating Committee for Local Authority Chief Officers’ “Conditions of Service Handbook”, something that is not addressed in Ms Banton’s written submissions and was not addressed at Tribunal. Mr Dennis makes submissions in respect of both documents. In order to avoid any potential confusion, we shall adopt his terminologies, namely the “Chief Executives Handbook” and the “Chief Officers Handbook” to distinguish them.

13. Our findings and conclusions in relation to the Detriments are set out in the same order in which they appear in the Agreed List of Issues. Although that means the issues are not addressed strictly in chronological order, we are satisfied that this will not confuse the reader.
14. There are 26 witness statements. We heard evidence from a total of 21 witnesses, including the Claimant. Mr Dennis submits that the Claimant is not a credible witness for at least five reasons he sets out in his written submissions. As we shall come to, whilst there is some weight in his submission that the Claimant has misinterpreted or misremembered certain events, we are careful to avoid making broad brush impressionistic observations which are no substitute for careful analysis of the specific issues in the case and the evidence pertaining to them. For the reasons we shall also come to, we are satisfied that the Claimant genuinely believes that she was discriminated against even if, by her own account, she was minded to question Mr Gladstone’s integrity “in all situations”.
15. Mr Dennis confirmed that he would not have any questions for the Claimant’s five witnesses, meaning that their evidence was not tested even if many of the issues they address were explored with the Claimant and challenged in the course of her cross examination. The Claimant’s five witnesses were:
 - 15.1. Sharon Bishop, a UNISON trade union representative who attended the Claimant’s probation review meeting with Mr Gladstone on 10 May 2023 and a further meeting on 14 August 2023 in connection with an Independent Panel’s review of a recommendation by Mr Gladstone that the Claimant should be dismissed for failing her probation period. In her written statement Ms Bishop refers to the Claimant as having challenged the process on 10 May 2023 but disputes that she can be said to have been challenging in terms of her actual behaviour on that occasion, something we shall come back to;
 - 15.2. Ruth Heron, a Senior Learning Consultant who acted as a mentor and guide for the Claimant;
 - 15.3. Paul Turner, Director, Legal and Assurance at Essex County Council. Mr Turner is a solicitor of 40 years standing. He mentored the Claimant from around the time of her May 2023 probation

review meeting and in his written statement addresses the Claimant's actions in July 2023 when she sent him a copy of a confidential report regarding the future of Peterborough's Legal Services;

- 15.4. Ravi Subramanian, the Regional Secretary for UNISON in the West Midlands. Mr Subramanian assisted the Claimant when concerns arose in 2022 that she was experiencing race discrimination at Birmingham where she then worked. They spoke on her first day with the Respondent and the question arises whether Mr Subramanian statement supports that the Claimant experienced a hostile working environment on her first day at the Respondent; and
- 15.5. Ms Atri, formerly the joint Director of Public Health for Cambridgeshire County Council and Peterborough City Council. Ms Atri was interviewed in connection with a grievance raised by the Claimant, including her recollection of a CLT meeting at which Ms Booth, the Respondent's Chief Finance Officer was allegedly aggressive towards her and the Claimant.

On the basis that Mr Dennis would not have any questions for the Claimant's witnesses, Ms Bishop and Ms Atri were excused from attending Tribunal merely in order to adopt their statements as their evidence.

16. For the Respondent we heard evidence from:
 - 16.1. Mr Gladstone;
 - 16.2. Ms Booth;
 - 16.3. Ms Pullen;
 - 16.4. Michelle Abbott, Principal Lawyer;
 - 16.5. Adrian Chapman, Executive Director of Place and Economy, who was also a member of the CLT;
 - 16.6. Edward Morris-Jones, Senior People Business Partner;
 - 16.7. Rachel Edwards, Head of Constitutional Services;
 - 16.8. Daniella Soltysinska, at the relevant time HR Business Partner for Legal & Governance, Corporate Services and Place and Economy;
 - 16.9. Ben Stevenson, Head of Information, Governance and Data Protection Officer;
 - 16.10. Mark Emson, Electoral Manager;

- 16.11. Sarah Spendelow, currently Head of People and Development - Ms Spendelow was employed as an HR Manager at the time of the events with which we are concerned;
 - 16.12. Amelia Midgley, Executive Office Manager to the Chief Executive;
 - 16.13. Amanda Rose, Head of Communications, who was also a member of the CLT;
 - 16.14. Claire Seymour, HR Director at VERO HR Limited, a human resources consultancy business in Peterborough;
 - 16.15. Christina Thompson, at the relevant time Senior HR Business Partner;
 - 16.16. Grant Osbourn, South Cambridgeshire District Council's Independent Person for 2022 / 2023; and
 - 16.17. Councillor Wayne Fitzgerald, Leader of the Conservative Group of Peterborough City Council and, at the time of the events in question, Leader of the Council.
17. In addition there were witness statements from:
- 17.1. Eleanor Kelly, the Chief Executive of London Borough of Southwark from July 2012 to May 2022, when she retired. Ms Kelly was the Chair of the Improvement Panel;
 - 17.2. Edward Leigh, Chair of the Cambridgeshire Police and Crime Panel at the time of the events with which we are concerned; and
 - 17.3. Jane Webb, Senior Democratic Services Officer for the Police and Crime Panel at the time of the events with which we are concerned.

As Ms Banton confirmed that she would not have any questions for them we excused their attendance at Tribunal.

The Chief Officers Handbook and Model Disciplinary Procedure

- 18. The Local Authority (Standing Orders) England Regulations 2001 (as amended by the Local Authority (Standing Orders) England (Amendment) Regulations 2015) require that a local authority takes into account any advice, views or recommendations of an independent panel before it votes on any motion to approve the dismissal of a member of the Golden Triangle for any reason other than redundancy, permanent ill-health or the expiry of a fixed term contract. The Regulations therefore apply to any proposal to terminate a member of the Golden Triangle for failing to pass their probation period. Ms Banton submits, amongst other things, that the 2015 Regulations introduced a mandatory investigation stage. In fact, the 2015 Regulations amended the 2001 Regulations by omitting regulation 7 which made provision for the investigation of alleged misconduct where

such an investigation appeared to the authority to be warranted. In place of regulation 7, the 2015 Regulations introduced mandatory oversight by an independent panel. The arrangements in this regard are set out in a new Schedule 3 to the 2001 Regulations. The amended Regulations do not mandate an investigation, though neither do they preclude such - paragraph 8(b) of Schedule 3 merely provides that in addition to the advice, views, or recommendations of the independent panel, the authority must also take into account the conclusions of any investigation into the proposed dismissal ie, if there is an investigation.

19. Subject to these provisions, the Chief Executives Handbook acknowledges that it is for each local authority to determine its own procedures and practical arrangements for the handling of disciplinary action and the dismissal of its Chief Executive. There is a Model Disciplinary Procedure at Appendix 5 of the Chief Executives Handbook (updated 7 September 2023). The introduction section starts with the following statement: "The Model Procedure should be followed except in so far as the parties locally agree to vary it" (page 4578).
20. We are, of course, concerned with the Claimant's position as Monitoring Officer. In this regard, Ms Banton seeks to rely upon a communique issued by the Local Government Association in May this year, which reminds local authorities of the provisions of the Model Disciplinary Procedure (pages 258 to 260 of the Supplementary Bundle). Ms Banton submits that this evidences that the provisions of the Model Disciplinary Procedure were incorporated into the Claimant's contract. We do not accept that this logically follows. Putting aside that the communique post-dates the Claimant's employment at Peterborough, we do not consider that the communique assists in an understanding of the status of the Model Procedures at Peterborough, specifically as between the Claimant and the City Council. Instead, we prefer Mr Dennis' more rigorous analysis. He highlights the provisions of paragraph 1.2 of the Chief Officers Handbook (page 165 of the Supplementary Bundle), applicable in England. The Handbook was last updated in 2017 and provides:

1.2. (England) Paragraph 13 and 13A and Appendix 5A of the [Chief Executives Handbook], which give effect to these statutory requirements, *can be used as a reference guide* in circumstances where disciplinary action against the Monitoring Officer ... is contemplated." (adopting Mr Dennis' emphasis)
21. The same wording appears in Part 3(1) of the Chief Officers Handbook. The language is permissive, meaning that the Respondent could have had regard to the Model Disciplinary Procedure in the Chief Executives Handbook as a reference guide when it was contemplating terminating the Claimant's employment, but that it was not required to do so.
22. As Mr Dennis does, we also note paragraph 25 of the Claimant's contract of employment, which provides as follows:

These terms are locally determined and not subject to the JNC conditions except where specifically stated."

(page 290)

The contract does not state elsewhere that the Respondent has adopted the Model Disciplinary Procedure in relation to the Claimant or even that its provisions would or should serve as a guide in relation to any contemplated disciplinary action (including any proposal to terminate her employment for failing her probation period). Instead, the contract refers to the Respondent's Disciplinary Policy and Procedure, albeit which are stated not to form part of the contract of employment.

23. The Chief Executives Handbook also contains a Model Grievance Procedure for dealing with grievances by or against Chief Executives. The Claimant says in paragraph 370 of her witness statement that there should have been a member led Grievance Committee to hear her grievance against Mr Gladstone and that the Respondent's failure to arrange this "denied me the legal protection to which I was entitled". There is no explanation as to why she was allegedly entitled to a member led Grievance Committee. The Chief Officers Handbook has nothing to say on the subject. Mr Gladstone's contract of employment does not state anywhere in it that the Model Grievance Procedure applies to his employment, including where a grievance is brought against him.
24. Mr Dennis submits that the Handbooks and Model Procedures are a red herring. Even if we were to have accepted Ms Banton's submissions as to their status and effect, this would not alter our conclusions in this case. As we shall explore when we come to consider the Respondent's departure from its Probation Procedure and the parties' respective submissions as to whether or not the Independent Panel was lawfully constituted, the question as we see it is how any relevant procedural and constitutional requirements were understood by those who may have departed from their provisions and whether 'something more' is to be inferred from any such departure or indeed any other procedural shortcomings affecting the Claimant.

Findings

25. Although the identification of appropriate comparators involves findings of fact, we have found it convenient to largely address any comparator issues within our conclusions. Otherwise, our findings and, in the case of the asserted protected acts, conclusions are as follows:-

First Protected Act

On 20 October 2022, by informing MG and Ms Pullen via Teams of her race discrimination complaint against BCC.

26. Sections 27(1) to (3) of the Equality Act 2010 provide:

- (1) A person (A) victimises another person (B) if A subjects B to a detriment because—
 - (a) B does a protected act, or
 - (b) A believes that B has done, or may do, a protected act.
 - (2) Each of the following is a protected act—
 - (a) bringing proceedings under this Act;
 - (b) giving evidence or information in connection with proceedings under this Act;
 - (c) doing any other thing for the purposes of or in connection with this Act;
 - (d) making an allegation (whether or not express) that A or another person has contravened this Act.
 - (3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.
27. 'A' may victimise 'B' because they believe that 'B' has done a protected act regardless of whether in fact 'B' has done so. Paragraph 5.1 of the List of Issues identifies that the victimisations complaints are pursued under both limbs of subsection (1) of section 27, in other words the Claimant claims that she was victimised because she did protected acts, alternatively because the alleged discriminators believed she had.
28. It is also important to note under subsection (3) that the information or allegation in question must be false (that is to say, incorrect) *and* made in bad faith before an act ceases to be protected. In other words, B's bad faith does not mean they forfeit their right to protection in respect of information or allegations that are true.
29. We have not thought it necessary to repeat here what was said by Her Honour Judge Eady QC in Saad v Southampton University Hospitals NHS Trust [2019] ICR 311, regarding an employee's motives in giving the evidence or information or in making the allegation being part of the context in which tribunals assess bad faith, since Mr Dennis has quoted from the judgment more fully at paragraph 29 of his written submissions.
30. Returning then to the first alleged protected act, Mr Gladstone and Ms Pullen met with the Claimant on 19 October 2022 at a coffee shop for a welcome chat and to agree a start date. They were evidently eager to finalise the start date, particularly as the Claimant's predecessor was in

the final weeks of her employment. As we have noted already by way of introduction, Peterborough was assessed in 2021 as requiring improvement, including in the area of governance. Against that background and in the context also that there was an Improvement Panel in place to support progress on a range of matters, including its governance arrangements, the Respondent could not realistically afford to be without a permanent Monitoring Officer, certainly for any length of time. During their catch up on 19 October 2023, the Claimant made a passing comment that indicated unresolved issues with Birmingham. Mr Gladstone and Ms Pullen did not pursue this further with the Claimant immediately but instead discussed afterwards that it might explain why there seemed to have been difficulties in finalising a start date with the Claimant. Ms Pullen reached out to the recruitment consultant about the matter and also set up a further meeting, by Teams, with the Claimant the following day. Their intention was to understand whether any issues with Birmingham might impact the Claimant's start date. Ms Pullen's limited handwritten notes of the meeting on 20 October 2022 are at pages 552 and 553 of the Bundle. Her evidence in relation to the meeting largely derives from the notes, though she specifically recalls the Claimant saying that she wanted a fresh start and Mr Gladstone telling her that Peterborough would be a fresh or clean start for her. The Claimant's evidence in the matter is limited; in her witness statement she claims that she advised Mr Gladstone and Ms Pullen on 20 October 2022 of "the racial discrimination that I experienced at my previous employer" and that she "went into more detail at the Teams meeting", but without providing any further information as to what that further detail was.

31. Subsequently, on 1 November 2022, following a call with the Claimant, the recruitment consultant informed Ms Spendelow, who was then dealing with the practical arrangements, that the Claimant's settlement agreement with Birmingham would be concluded by 4 November 2023. She wrote,

"It feels like she has drawn a line under the situation and agreed a suitable settlement and is then ready to move on"

(page 565)

32. Notwithstanding the Claimant's limited evidence about the matter, in our judgement the Claimant did do a protected act during the Teams meeting on 20 October 2022, namely she implicitly alleged that Birmingham City Council had contravened the Equality Act 2010. Accepting, as we do, Ms Pullen's evidence that the Claimant was not always clear in what she was saying (Ms Pullen describes the conversation as "all over the place"), including at times whether she was referring to Birmingham or another former employer, nevertheless Ms Pullen's handwritten notes capture references by the Claimant to an "ET case", a "formal grievance", "spiralling treatment", "injury to feelings", "settlement agreement" and "2 ethnic ADs like me". Mr Gladstone explains at paragraph 18 of his witness statement that during the Teams meeting the Claimant referred to there being just

two minority ethnic Assistant Directors amongst 100 or so managers at Birmingham. In our judgement, however ineloquently expressed, the Claimant was making an allegation that Birmingham had racially discriminated against her as one of just two minority ethnic Assistant Directors. Although Mr Gladstone and Ms Pullen did not see her subsequent resignation email to Birmingham, it sets out why she believed at the time that she had been racially discriminated against at Birmingham. It is consistent with the basic matters captured in Ms Pullen's handwritten notes, which evidences to us that the reasons she eventually gave Birmingham for resigning her employment had been shared with Mr Gladstone and Ms Pullen on 20 October 2022, even if in a somewhat unstructured way and without the Claimant stating explicitly that she had been racially discriminated against.

33. Even had we not been persuaded that the Claimant did a protected act, on his own evidence, Mr Gladstone believed that she did a protected act on 20 October 2022. It seems to us that paragraph 19 of Mr Gladstone's witness statement is conclusive on the issue of his understanding or belief in the matter, namely:

"She did not explicitly state that her claim was race discrimination but there was certainly a sense that it was from the conversation we had and that the dispute had some race elements to it."

34. As regards Ms Pullen, she is an experienced senior HR professional. She impressed us at various points with her thoughtful reflections and insights. Although she says that from her recollection she could not say the Claimant mentioned anything about race discrimination, we conclude that by the time the Claimant started at Peterborough, she too understood at some level that the Claimant was alleging race discrimination in relation to Birmingham.
35. We do not understand the Respondent to assert that the Claimant made false allegations about Birmingham or that she was acting in bad faith when she shared her experiences with Mr Gladstone and Ms Pullen. In any event, we do not see how any such assertion could be maintained given that the Claimant was not questioned at Tribunal as to the merits or otherwise of her allegations against Birmingham. It was certainly not suggested to the Claimant during cross examination and it is no part of Mr Dennis' closing written or oral submissions that the Claimant raised these matters on 20 October 2022 because, for example, she was positioning herself for any future dispute with Peterborough or that she otherwise had some ulterior motive. We understood Mr Gladstone and Ms Pullen to accept at Tribunal that in disclosing the dispute the Claimant was endeavouring to be open and transparent, even if they felt she might have disclosed it a little earlier than she did.

Detriment 1

On 14 November 2022, by Matthew Gladstone (“MG”) conducting a hostile meeting with C pressuring her to sign the settlement agreement, related to race discrimination, with Birmingham City Council and strongly advising C to sign it.

36. The Claimant alleges that on her first day at Peterborough, Mr Gladstone’s conduct towards her was hostile and that as soon as they met that day he pressured her to sign a settlement agreement with Birmingham and strongly advised her that she should sign it. Although it is just one of 43 claimed detriments in this case, it is central to the Claimant’s claim that from the outset of her employment her ‘cards were marked’.
37. In her closing written submissions, Ms Banton reminds us of Sedley LJ’s suggestion in Anya v University of Oxford [2001] ICR 847 that tribunals look for indicators from a time before or after the decision complained of which might demonstrate that an ostensibly fair-minded decision was, or was not, affected by racial bias. If one considers the period of time before the Claimant started at Peterborough, there is no suggestion by the Claimant of any adverse reaction on the part of Mr Gladstone or Ms Pullen when she first disclosed her dispute with Birmingham on 20 October 2022. If, as the Claimant asserts, Mr Gladstone reacted so strongly to the first protected act that he resolved to get her out, it is perhaps surprising that he betrayed no obvious concerns or hostility during the forty minutes or so that they spoke on 20 October 2022 and, further, that no obvious concerns are indicated thereafter in any emails prior to the Claimant’s first day at Peterborough.
38. The Claimant accepted at Tribunal that Mr Gladstone was fully supportive of her appointment. The Respondent’s witnesses said the same. Yet the Claimant now claims that she never felt included or welcomed and that there was a tense, cold, hostile atmosphere from the outset. She says,

“I knew there was a plan against me and so I started making detailed records of everything.”

Whatever detailed records she may have kept, they were not available to us. Instead there are contemporaneous records of Mr Gladstone telling the Claimant on 22 November and 2 December 2022,

“Huge welcome to the authority – great you have started” and, “Keep up the good work – really welcomed”.

We are satisfied that these sentiments were genuinely expressed on his part. Indeed, it seems inherently unlikely that Mr Gladstone would have praised the Claimant’s good work if he had an agenda to get her out and there was a plan against her.

39. Notwithstanding, as we shall come to, we uphold the Claimant's complaint regarding comments made by Mr Gladstone when an Interim Head of Legal, Ms Omoregie started at Peterborough in February 2023, during the hearing we explored with the Claimant what she meant in paragraph 83 of her witness statement on this issue when she said that Mr Gladstone was horrified that,

“...another black woman was working with the Senior Leadership Team”

(our emphasis).

The implication is that Mr Gladstone was equally horrified to have the Claimant on the CLT. Given he fully supported her appointment and was pleased to have her on board, any suggestion that he was made uncomfortable by having a black woman on his senior leadership team is not credible, nor indeed the allegation that he was “horrified” to have *another* black female senior colleague when Ms Omoregie joined.

40. Mr Dennis is also right to highlight the Claimant's assertion that contact from Ms Rose and others in the period before she joined the Respondent, during which she alleges she was badgered to sign the settlement agreement with Birmingham, was,

“disguised as wanting to know whether they could make a press release regarding my arrival at [Peterborough]”

(paragraph 48 of her witness statement)

We agree with Mr Dennis that the contemporaneous emails within the Bundle confirm that it was no such thing and that any contact was purely and plainly about fixing the Claimant's start date and finalising and issuing a press release about her recruitment.

41. We further note in this regard that Ms Spendelow emailed the recruitment consultant on 26 October 2023 to say:

“Matt wants this sorted, and comms issued to announce her appointment & start date. He goes on leave on Thursday so wants to know its sorted before he goes.”

(page 563)

In other words, six days on from the Teams meeting and the Claimant's first protected act, Mr Gladstone was impatient for the Claimant to join Peterborough. It adds further weight to Mr Dennis' submission that the Claimant has misinterpreted or misremembered innocent events. It certainly adds to the overall picture above which informs our view of Mr Gladstone's conduct on 14 November 2022. As we shall come back to in the course of these reasons, and adopting what was said by Leggitt J (as

he then was) in Gestmin SGPS SA v Credit Suisse (UK) Limited & Anor. [2013], there is some evidence that the Claimant's past beliefs have (sub-consciously) been revised in certain respects to make them more consistent with her present beliefs.

42. As regards Mr Gladstone's conduct on 14 November 2022 itself, we do not accept the Claimant's account that Mr Gladstone deliberately avoided eye contact with her as she was sitting in the Director offices waiting to meet him. She cannot realistically assert this or claim to have experienced the environment as cold and hostile before she and Mr Gladstone had even spoken. A cold and hostile environment is certainly not indicated by Mr Gladstone's comments on 22 November and 2 December 2022.
43. We have given particularly careful thought to why the Claimant might have suggested during the meeting on 14 November 2023 that she would leave the Respondent and take a locum position elsewhere. It is common ground that she said this. On any view it is a striking thing for her to have said on her first day following a lengthy and involved recruitment process. Yet, as Ms Banton reminds us in her written submissions, it is important to consider the overall picture. In our view, the overall picture involves in particular an understanding of the circumstances in which the Claimant left Birmingham and joined the Respondent, as well as an appreciation of the related claims she makes about Mr Gladstone's contact with Birmingham's solicitor, Mr Greenburgh some months later (Detriment 9). We return to this second issue in our findings and conclusions below, but for present purposes simply note that we do not accept the Claimant's evidence or assertions in relation to Detriment 9.
44. As for the circumstances in which the Claimant left Birmingham, during the Teams call on 20 October 2023 she described Birmingham as a "basket case". She resigned her employment with Birmingham with immediate effect on Thursday 10 November 2022 and started at Peterborough just four days later without any meaningful break. She took the job at Peterborough with a clear understanding of the challenges that awaited her and also knowing that it was a development role for her. She would undoubtedly have experienced a heavy weight of expectation, which would have been exacerbated by her inability to achieve a smooth exit from Birmingham. In her witness statement, the Claimant refers to her experiences at Birmingham as traumatic. If she was indeed traumatised by those experiences, we find that she would have been particularly sensitive to any potential indications that her experiences at Birmingham might be replicated elsewhere. In our view, it provides the most likely explanation for why she perceived the meeting on 14 November 2022 as she did. Rather than there having been a cold and hostile environment from the moment she arrived at Peterborough that day, we find that Mr Gladstone and Ms Pullen were friendly and welcoming albeit the meeting took an unexpected turn when the issue of the settlement agreement came up. In particular, we find that Mr Gladstone was a little surprised to hear that the agreement had still not been signed given the Claimant had

previously indicated though the recruitment consultant that it was on the cusp of being finalised and this would enable her to move on. This news caused him to question in his mind, firstly whether there was a risk she might be distracted from the task at hand and, secondly whether he should have apprised Cllr Fitzgerald of the dispute.

45. We have reflected on why Ms Pullen was present. We accept her and Mr Gladstone's evidence that Mr Gladstone believed it would be nice for the Claimant if there was a second familiar face to greet her on her first day. Again, it undermines the Claimant's claim that there was a cold and hostile environment.
46. We do not accept the Claimant's evidence that Mr Gladstone went straight into asking her about the settlement agreement with Birmingham on 14 November 2022. During the meeting he had explained to the Claimant that certain sensitivities in relation to the outgoing Monitoring Officer meant there might not be a formal handover of her duties to the Claimant. That does not obviously indicate any hostility on Mr Gladstone's part, rather that he was alerting the Claimant to the fact that she might not benefit from a formal handover but that she should not be deterred by this.
47. Ms Pullen says that the meeting started as a regular 'meet and greet' and that she was taken by surprise by the Claimant's comment during the meeting that she would leave and take a locum job elsewhere. We accept that the comment was unexpected and out of context given the tone and flow of the conversation. Ms Pullen's evidence in the matter is consistent with what we accept was a similar experience some months later when the Claimant introduced the Birmingham matter into a conversation on 24 March 2023 without obvious context (see Detriments 9 and 12 below).
48. We also consider that the Claimant's failure to finalise a settlement agreement with Birmingham, in circumstances where she had told the recruitment consultant at the beginning of the month that it was about to be signed, meant she was on her guard, even a little defensive, about the matter when it came up in conversation on 14 November 2022. We conclude that she misinterpreted Mr Gladstone's appropriate and understandable enquiries about the matter and, what we find was his encouragement to finalise an agreement as somehow hostile or critical, because she lacked the resilience to navigate such a discussion as well as the ability to recognise that Mr Gladstone's focus was solely on ensuring that she would hit the ground running. For the avoidance of doubt, we do not accept that Mr Gladstone pressured the Claimant to sign a settlement agreement, let alone that he brought unconscionable pressure to bear. We find that he broached the topic in an appropriate, professional way. Any misunderstanding or sensitivity on the Claimant's part ought to have been assuaged by Mr Gladstone's encouragement to the Claimant to see Peterborough as offering her a fresh or clean start, but we find that in that moment she was unable to bring the necessary clarity of thought and objectivity to the situation, and reacted by saying that she would leave.

We find that neither Mr Gladstone nor Ms Pullen had given her any cause to do so.

49. The fact that the Claimant spoke to Mr Subramanian that evening and told him that Mr Gladstone had repeatedly urged her to settle with Birmingham does not alter our findings. All it evidences to us is that she relayed to Mr Subramanian how she had perceived the earlier meeting.
50. In conclusion, we do not uphold the complaint, specifically the allegations that it was a hostile meeting, that the Claimant was pressured to sign the settlement agreement or that Mr Gladstone “strongly” advised her to sign it.

Detriment 2

On 1 February 2023, MG’s remark *“bringing your dog to work day and that was EDI”*.

51. The Claimant, Mr Gladstone, Ms Booth and Mr Chapman went for dinner on the evening of 1 February 2023. In the course of the evening the discussion moved onto Mr Chapman’s Level 7 Leadership Apprenticeship. The Claimant alleges that when Mr Chapman said that his first assignment was about equality, diversity and inclusion at Peterborough (“EDI”), Mr Gladstone had responded by suggesting that he should write an assignment about “bring your dog to work day” before saying, “that is EDI”.
52. Mr Gladstone, Mr Chapman and Ms Booth each recall a conversation, though in the case of Ms Booth she does not recall EDI being the initial topic of discussion. It is not in dispute that Mr Gladstone suggested to Mr Chapman that his assignment might be on the topic of “bring your dog to work day”, but they dispute that Mr Gladstone said “that is EDI” or something similar. Given that Mr Chapman had elected to write an assignment on EDI, suggesting to us some professional, even personal interest in the topic as it related to Peterborough, we find that he would have remembered had Mr Gladstone made any comment belittling its importance either generally or at Peterborough. Earlier that day there had been a meeting of the wider senior leadership, in the course of which staff benefits had been discussed in the context of the Respondent’s financial challenges. One of the attendees had introduced the topic of employees being permitted to bring their dogs to work, something Mr Gladstone had direct prior experience of. The topic had prompted quite a lot of humour in the meeting, with a number of the attendees being dismissive of the idea but others perceiving it as something worth exploring further. Although she had attended the meeting, the Claimant could not recall either the meeting itself or what had been discussed when she was asked about the matter at Tribunal. Whilst she does not actively dispute there was a discussion of ‘bring your dog to work day’, this context was omitted from her May 2023 grievance about the matter.

53. We find that Mr Gladstone did not say that 'bring your dog to work day' "is EDI" or, by any comments of his that evening imply this to be the case. The evidence does not support that he made any comments belittling of the topic of EDI or which might reasonably have been understood in that way. We conclude that it was a convivial, inclusive evening in the course of which Mr Gladstone had mirrored the earlier light-hearted discussion by suggesting to Mr Chapman that he might perhaps do an assignment on the topic of 'bring your dog to work day'. This had provoked some amusement because it was understood by the others to be a light-hearted reference to the debate earlier in the day, not because Mr Chapman or Ms Booth understood Mr Gladstone to be belittling EDI and were joining in. As we say, Mr Chapman had chosen the topic of EDI for his assignment, in which case it makes no sense that he would belittle or mock something he had some professional, even personal interest in and had elected to study. We accept his evidence at Tribunal that he would have called Mr Gladstone out had he made the comments attributed to him by the Claimant or something similar.
54. We do not accept the Claimant's suggestion that Mr Gladstone was effectively comparing people from diverse backgrounds such as herself to dogs (paragraphs 79 and 81 of her witness statement). It is a particularly serious allegation, namely that Mr Gladstone holds deeply racist views about people from diverse backgrounds and that he was willing, as she alleges in paragraph 81 of her witness statement, to compare her importance to that of a dog in her presence and in front of others. It was certainly not how the Claimant recounted the matter when she first expressed concerns in relation to the dinner in a letter to Mr Gladstone dated 9 May 2023 (pages 1465 to 1467) in which she simply said that he had trivialised the importance of EDI. In our judgement, the Claimant has sub-consciously revised her views of the dinner so that they are more consistent with how she now sees things, specifically that Mr Gladstone began to target her at this time and direct jokes "at 'black' me". We do not uphold her complaint.

Detriment 3

In February 2023, by MG asking if C knew Ms Omoregie (black).

55. In February 2023, Adsuwa Omoregie commenced employment with the Respondent as Interim Head of Legal. The Claimant says that Mr Gladstone asked her if she knew Ms Omoregie. In her witness statement, the Claimant refers to him asking, "...if I knew her / if we were friends". Mr Gladstone says that to the best of his recollection, on being introduced by the Claimant to Ms Omoregie he asked if they had worked together and that he did so because it is not uncommon for senior leaders to recruit people they have previously worked with or who are otherwise professionally known to them, particularly when filling interim positions. We can accept that this may have been what Mr Gladstone intended to say, and why it might be an 'ice-breaker' during an initial introduction to a

new starter. Nevertheless, we find that Mr Gladstone did ask the Claimant and Ms Omoregie whether they were friends.

56. The alleged comments were corroborated by Ms Omoregie when interviewed by Ms Seymour. Not only did she volunteer that Mr Gladstone had asked whether she and the Claimant were friends but, when Ms Seymour went on to ask if Mr Gladstone had asked whether they had previously worked together she responded,

“No, I think it was mainly if we were friends, I hadn’t thought of it again until I received the message of this, I didn’t recall anything else specifically.”

She went on to say,

“Unusual I thought, that is all, I thought it a bit strange as to why he would think we would be friends.”

(page 3972)

57. Later in the interview she was asked by Ms Seymour whether she had been treated differently because of her race. She replied,

“Oh, I guess, looking back to when we were asked if we were friends, I don’t know if it’s because he saw 2 black sitting together that he assumed that we were friends talking together, I don’t know if is an element, it was a bit unusual when asking if we were friends soon as I was introduced.”

(page 3977)

Detriment 4

On 22 February 2023, by MG’s comment, “be careful you don’t get lynched by that lot”.

58. On 22 February 2023, the Claimant was part of a small group who went for drinks to celebrate the 2023/24 budget having been approved by full Council. The Claimant alleges that as she got up to leave at the end of the evening, Mr Gladstone said, “be careful you don’t get lynched by that lot” referring to a group of politicians who were in another area of the bar. The Claimant frames his alleged comments in the following context:

“Again, knowing full well about my experiences at BCC and having no care for the fact that I was black, he said it, because he could and wanted to embarrass me. He succeeded. I have never felt so embarrassed in my life. It was another joke directed at me because I was black. It’s not the first time we were at the restaurant, a social

setting, and this second time again in a social setting. It felt like the joke was on Rochelle, let's make "the jokes about black people".

She goes on to say,

"I found these comments highly offensive and upsetting as a black person knowing that loads of black people were lynched during slavery. It was upsetting, humiliating and harassing. What was most hurtful was that everyone was laughing like it was okay to say this."

(paragraphs 95 and 96 of her witness statement)

59. When the Claimant's May 2023 grievance about the matter was investigated by Ms Seymour, Mr Gladstone told her that his only comment was that developers can sometimes latch onto officers. This was in the context of a story he had related that evening about a restaurant opening he had recently attended at which one or more developers were also present. Mr Chapman remembered a comment by Mr Gladstone about making sure 'they' did not crowd around her, and that he was referring to any councillors or developers who might still be in the bar. When informed by Ms Seymour that Mr Gladstone had claimed to have used the expression "latch onto", Mr Chapman replied, "much more like it" (page 3940).
60. Mr Gladstone, Mr Chapman, Ms Booth and Ms Edwards were all cross examined on the basis that the Claimant was the only person who was not drinking that evening, when in fact we accept that Mr Chapman and Ms Edwards were also not drinking, and that Mr Gladstone and Ms Booth had a moderate amount to drink. We have referred already to Mr Chapman's evidence that had Mr Gladstone referred to "bring your dog to work day" as EDI he would have called Mr Gladstone out. In the course of his evidence, he said,

"I am not a foot soldier; I am my own leader and I have my own values."

We accept his evidence in that regard and find it inconceivable that he would join in laughter that was intended to mock or humiliate the Claimant in response to racially harassing comments by Mr Gladstone. The suggestion is also at odds with Mr Chapman's actions in escorting or driving the Claimant to her car at the end of the evening which evidences to us instead his concern for her safety and wellbeing, rather than a willingness to join in a racist joke directed at the Claimant and intended to humiliate her. We find that Mr Gladstone did not use the word "lynched" but instead "latch onto". For the avoidance of doubt, whatever laughter or good spirits were on display that evening, we are confident that these were not directed at the Claimant let alone signifying group approval of unwanted comments by Mr Gladstone that served to create an adverse environment for the Claimant. We do not uphold the complaint.

Detriment 5

In or around March 2023, C complained to Edward Morris-Jones in HR about Michelle Abbott giving an allegedly dishonest written account about her, and asked for it to be pursued, but HR advised and decided to take no disciplinary action against Ms Abbott.

61. The Claimant says that after she complained to Mr Morris-Jones about Ms Abbott giving an allegedly dishonest written account about her in an email and asked for the matter to be pursued, he advised and decided to take no action against Ms Abbott. The Claimant's witness statement suggests that she complained about Ms Abbott having provided a dishonest account before she had had sight of the email in question, since the advice about which she complains was proffered on 8 March 2023, several days before she secured a copy of the offending email. Mr Morris-Jones first saw the email in question in the course of these proceedings.
62. The Claimant evidently has a poor opinion of Ms Abbott, though she does not allege that Ms Abbott's concerns were racially motivated, even if she says they were dishonest. There is something of a disconnect between how the Claimant believes Ms Abbott's concerns should have been dealt with and how she expected her own concerns to be handled, namely she believes Ms Abbott should have faced an immediate disciplinary investigation. Be that as it may, the question is not what the Claimant thinks in the matter but what was in the minds of those who made any decisions that affected her, namely what was their view of Ms Abbott's written account and, specifically, why did they advise and decide (if indeed they did so decide) to take no disciplinary action against her.
63. Ms Banton confirmed at Tribunal that the complaint is directed at Mr Morris-Jones and Mr Gladstone. We agree with Mr Dennis that it is unclear why Mr Gladstone has been named in the matter since there is no evidence that he was involved in any way in the advice given by Mr Morris-Jones or that he had any other involvement.
64. Ms Abbott initially contacted Mr Chapman on 10 January 2023 asking for an off the record chat to,

“...discuss a few things which are happening in Legal and I need to let someone else know because I am not sure I am feeling very supported.” (page 718)

As Mr Chapman was away from the office they did not speak until 16 January 2023 when Ms Abbott offered her perspective of Legal Services, including what she believed was a lack of leadership. Ms Abbott was evidently mindful of Mr Chapman's position, hence her suggestion of an off the record chat. In our experience, it is not necessarily unusual for employees to discuss their concerns informally with another senior leader in this way. Mr Chapman told Ms Abbott that he would need an

opportunity to reflect on their discussion. She followed up with him on 19 January 2023 when she asked him if he had had a chance to think things over. Mr Chapman responded by letting her know that he had a meeting the following day with Ms Pullen and would revert to her thereafter. He met with Ms Pullen as planned and relayed the general content of what he had discussed with Ms Abbott. They agreed that Ms Soltysinska should contact Ms Abbott. When Mr Chapman spoke again with Ms Abbott, Ms Soltysinska had already been in touch by email and they had made arrangements to speak. Ms Abbott told Mr Chapman that what was really needed was some short term resource for her team. We accept that it was agreed at that point that Mr Chapman would not be further involved.

65. Mr Chapman and Ms Abbott met again on 6 February 2023 on unrelated business, in the course of which meeting Ms Abbott shared similar concerns to those she had expressed two or three weeks earlier. She sent a detailed follow up email to Mr Chapman on 8 February 2023 (pages 773 – 776). It is this email that the Claimant objects to as a “dishonest written account”. It evidences to us a stressed employee, frustrated by the perceived burden of internal meetings, who was expressing concern that an issue regarding internal support remained unresolved, including a lack of clear communication around the matter. Much of the email was focused on a Contracts Team meeting which the Claimant had joined and used as an opportunity for introductions. Ms Abbott complained in her email to Mr Chapman that members of the Team had been made to feel uncomfortable as a result of questions directed towards their personal and family lives. We accept that these questions were intended by the Claimant as ‘ice breaker’ questions and that a number of the Team responded positively to the questions, including the Claimant’s evident efforts to build some rapport. We find that Ms Abbott’s greater source of frustration was that the Claimant had unwittingly taken up the bulk of the scheduled meeting time, leaving Ms Abbott with perhaps fifteen minutes at most to address the agenda items. She was also frustrated, even troubled, by the Claimant’s response when a member of the Team raised issues they had experienced with the Procurement Team; the Claimant had allegedly responded by indicating that these were potentially a capability issue which might need to be raised at CLT. Ms Abbott described having to intervene to de-escalate the situation and said that she had impressed that any concerns should be resolved through discussion and negotiation. In a similar vein, Ms Abbott recounted some potentially unhelpful comments on the part of the Claimant which she felt had suggested adverse consequences for the future of Legal Services if it sent work out to external lawyers, since questions might be raised as to whether an internal legal service was needed. In conclusion, Ms Abbott said that there was a lot of confusion, low morale and concern. Her email concluded,

“Sorry to have to send this email. Unfortunately these matters are for the record from this point onwards.”

(page 776)

If it was unclear, by those concluding comments, whether Ms Abbott was raising a grievance, she was certainly formalising her concerns, which could no longer be regarded as 'off the record'.

66. Mr Chapman shared Ms Abbott's email with Ms Pullen and Mr Gladstone who in turn disclosed to the Claimant that Ms Abbott had been in contact with Mr Chapman. There is no evidence that Ms Abbott was informed that the Claimant would be apprised of her concerns, let alone that she agreed to this, in which case it points if anything to Mr Gladstone putting the Claimant's interests ahead of Ms Abbott's by giving her a heads up in the matter without first discussing the matter with Ms Abbott. Whilst we do not have the complete chronology of events, the messages at page 4232 of the Bundle evidence that Mr Morris-Jones, the Claimant and Ms Omoregie spoke on 8 March 2023 when they discussed whether Ms Abbott might be "playing people off". It is not clear from the notes whether Mr Morris-Jones, the Claimant, Ms Omoregie or all three of them expressed concern as to whether Ms Abbott might be building a case; the further context in this regard is that another member of the Legal Services team, Employee A had resigned her employment and suggested it was constructive dismissal, which prompted at least one of the three to question whether Ms Abbott potentially also had a claim of constructive dismissal in mind. Regardless of which one or more of them it was, it is abundantly clear from the notes that they collectively recognised the potential for Ms Abbott to raise a formal grievance, if she had not already done so and, further, that the Claimant either preferred to resolve any concerns informally or agreed with Mr Morris-Jones' advice that this would be the preferred approach. The Claimant's email of 9 March 2023 to Mr Morris-Jones and Ms Omoregie puts the matter beyond any doubt. She wrote,

"As discussed *and agreed*, I will be speaking with Michelle informally on Monday".

(page 929, our emphasis)

67. In which case, the Claimant's complaint that HR "decided" to take no action against Ms Abbott is not well founded. As the Claimant wrote, there was a discussion and agreement. In any event, we find that any decision did not ultimately sit with HR, but was instead a matter for the Claimant and Ms Omoregie.
68. As to why Mr Morris-Jones' advised as he did, we shall come back to this in our conclusions below. As regards his knowledge or otherwise of the Claimant's first protected act, he knew that the Claimant had made a complaint against a former employer but we accept his evidence that he did not have any further details and that he was not interested to know the details as he considered it to be irrelevant in terms of her employment with

the Respondent. In which case we conclude that he did not know the Claimant had done a protected act or believe her to have done so.

69. Mr Morris-Jones' notes at page 4232 of the Bundle confirm that following their discussion on 8 March 2023, the Claimant intended to speak to Mr Chapman to secure a copy of Ms Abbott's email. It must be assumed that he agreed to provide her with the email since a copy was forwarded by Mr Chapman's PA to the Claimant on 13 March 2023. At the Claimant's request it was forwarded to both her personal and Peterborough email accounts seemingly without due consideration being given to Ms Abbott's data subject rights under the GDPR.

Detriment 6

In March 2023, by MG not inviting C to the meeting with the Government Department. The comparator is Rachel Edwards (white).

70. The Claimant complains that she was not invited to a meeting with the Local Government Intervention Team at the Department for Levelling Up, Housing and Communities ("DLUHC") on 8 March 2023. The meeting was to discuss the first 12 months of the Respondent's improvement journey, i.e. covering the calendar year 2022. On 11 January 2023 Mr Gladstone emailed Jason Harrison from the Intervention Team,

"Jason we talked pre-xmas around a session pulling out the experiences to date in helping to tackle the financial challenge / culture / improvement more broadly. The session was cancelled just before xmas. Happy to pick up on Friday as needed but we had suggested a focus session on this?"

(page 720)

Mr Gladstone's reference to Friday was to their next scheduled regular online meeting. These meetings were also attended by Ms Booth. They were not asked by Ms Banton whether other members of the CLT, including the Claimant's predecessor, had attended any of the meetings.

71. Whilst any mooted discussion in 2022 of experiences to date would barely, if indeed at all, touch upon the Claimant's involvement since 14 November 2022, nevertheless the experiences in question were seemingly intended to inform and shape the Respondent's ongoing improvement journey, of which the Claimant and others were plainly an integral part. That is reinforced by Mr Harris' suggested agenda for a regular meeting the following day; the suggested third item for discussion was,

"Next steps for future engagement".

72. A couple of weeks later, Mr Harris confirmed in an email to Ms Midgely that he was still looking to arrange a 'lessons learned' session. In a

subsequent email on 10 February 2023 he suggested 8 March 2023 as the date for the session and asked Ms Midgley to let him know,

“who would like to attend from Peterborough.”

(page 784)

She subsequently confirmed that Mr Harris would be accompanied by Ms Booth and Ms Edwards.

73. Ms Edwards’ evidence is that she attended the meeting on behalf of elected members. Ms Midgely apparently initially suggested the Claimant but Mr Gladstone proposed Ms Edwards instead as she was said to “have the history” (page 785). Ms Edwards cannot of course vouch directly for why in February 2023 Mr Gladstone chose to invite her rather than the Claimant, though the messages at page 785 provide a contemporaneous, potentially innocent explanation for Mr Gladstone’s decision in the matter.
74. Mr Gladstone expands upon the matter in paragraphs 39 and 40 of his witness statement and refers, amongst other things, to the Intervention Team wanting to understand Peterborough’s approaches around member and officer engagement, and to Ms Edwards having a good grasp of the political dynamic and assisting in securing buy-in to the improvement priorities across the Council. His evidence in this regard effectively went unchallenged. He also said at Tribunal that as with the regular online meetings, there was a particular focus on financial issues, including strategic financial planning. In response to questions from Ms Banton, he said that the meeting was not an opportunity for team building, and that they had not gone for dinner afterwards, that it was purely a work related meeting focused on progress in 2022. Improvement Panels for other Councils were reportedly struggling, whereas Peterborough was evidently turning itself around, so DLUHC wanted to hear about its experiences so that these might inform work being done elsewhere. As regards any lessons for Peterborough, Mr Gladstone explained that DLUHC’s views would have been fed back through the Financial Sustainability Working Group at Peterborough which the Claimant attended at Ms Booth’s invitation and also through the regular meetings with and reports to the Improvement Panel.

Detriment 7

On about 9 / 10 March by Cecilie Booth (“CB”) becoming extremely aggressive and verbally attacking C (and Ms Omoregie (black)) on the call. The comparator is Elaine Redding (white).

75. The Claimant has provided relatively few details of this matter in her witness statement. Ms Booth addresses it in more depth. The Claimant simply says that while on a call with Ms Booth, Elaine Redding (Director of Children’s Services) and Ms Omoregie, Ms Booth became,

“extremely aggressive and proceeded to verbally attack Adesuwa Omoregie and me. Although the matter related to action by Elaine Redding (white) and Adesuwa Omoregie, the attack was only focused on Adesuwa Omoregie and me, not Elaine. Cecille Booth’s hostile behaviour made me fearful and extremely uncomfortable ...”

76. The Claimant has not identified the relevant actions of Ms Redding and Ms Omoregie that she seeks to link together for the purposes of drawing a comparison, nor does she identify any actions of her own which she understands to have drawn Ms Booth’s ire, which might be contrasted with Ms Omoregie and/or Ms Redding’s alleged actions and treatment. Ms Banton’s submissions on the matter do not assist as they simply refer us back to the Claimant’s witness statement.
77. Ms Booth addresses the matter in paragraphs 10 to 15 of her witness statement. On 1 March 2023, a motion was received regarding introducing mandatory council tax relief for young people leaving care. The issue sat within Ms Booth and Ms Redding’s respective areas of responsibility. Ms Booth prepared a response to the motion within the required deadline, stating that mandatory exemption was not necessary. Perhaps more pertinently, there was no funding available for such an initiative as the budget had been approved by full Council only the previous week. It was illustrative of some ongoing lack of financial acumen amongst one or more elected members notwithstanding the improvement journey Peterborough was on. In Ms Booth’s absence on 8 March 2023, her response to the motion was removed. The Claimant had asked Ms Omoregie to look into the proposed motion. Without further discussion of the matter with Ms Booth, her response was replaced with one that made reference to legislation that could be relied upon to permit a blanket exemption. When this came to Ms Booth’s attention, she expressed her dissatisfaction, but otherwise let the matter go. However, the following day, Ms Booth was contacted by the Finance portfolio holder who said that members of the Administration did not agree with the response and did not think Peterborough should be offering a blanket exemption. Their views were consistent with Ms Booth’s original response on the motion. She felt that the amended response had therefore reflected badly on her. She emailed six individuals who apparently had some involvement in the matter and requested that in future, “nobody changes my narrative around anything that has financial implications for the Council” (page 895). At that point she was not singling the Claimant or Ms Omoregie out for specific criticism.
78. An hour or so later, the Claimant emailed Ms Booth and asked to discuss the matter on a call with herself, Ms Omoregie and Ms Redding. Ms Booth was driving home at the time and was subsequently dialled into a Teams call by the Claimant, during which she expressed anger and reiterated her request that it should not happen again. By her own account, Ms Booth was particularly annoyed with the Claimant as she felt that Ms Omoregie had changed the response under the Claimant’s watch. However, the

Claimant had in fact also been out of the office the previous day, we believe on annual leave, albeit she may have only made Ms Booth aware of this or reminded her of it following their call when she proposed a way forward to address Ms Booth's concerns.

79. Ms Booth implicitly acknowledges that her ire was not directed at Ms Redding as she says,

"I had no issues with Elaine's response as the motion was addressed to her as well as to me, and she had provided her view, which had not been altered by Adesuwa or the Claimant. The Claimant seems to be confused about the reason for my annoyance."

(paragraph 14 of her witness statement)

80. It is perhaps easy, with the benefit of hindsight, to suggest that the Claimant's relationship with Ms Booth might have got back on track had they reached out to one another in the days immediately following the Teams call and, in particular, had Ms Booth acknowledged her behaviour. Even after Mr Gladstone told them during their tripartite meeting on 22 March 2023 that they needed to sort out the tensions that had arisen between them, there was no immediate reproachment. When, as we shall come to, Ms Booth subsequently partially upheld a grievance against the Claimant, we think the Claimant began to view their relationship as increasingly untenable, even if there is evidence that she nevertheless reached out to Ms Booth on two or three occasions over the following weeks, albeit without any reciprocation on Ms Booth's part (see for example page 1068). Plainly, the right thing for Ms Booth to have done would have been to have apologised to the Claimant, Ms Omoregie and Ms Redding or, if her pride or ego did not permit this, to at least have reached out to them collectively or on an individual basis in some way that indicated a desire to mend fences. However, she was unwilling to offer an apology or find some common ground. When she was interviewed about the matter by Ms Seymour some five months later, she remained unrepentant. She told Ms Seymour,

"I probably come across sharper than most English people do anyway, I am aware how I can come across, I was furious. I had nothing to apologise about as they were in the wrong. I get on really well with Adesuwa, but her boss is Rochelle and this happened under Rochelle's watch."

(page 3951)

Notwithstanding Ms Booth had good reason to apologise, she still has not done so. She has had over two years to reflect on her conduct, particularly with the benefit of Ms Redding's reflections on the meeting, Ms Atri's feedback regarding her own experiences and the Claimant's

description of the impact that her behaviour had upon her. Ms Booth's entrenched attitude reflects poorly upon her.

81. In the course of investigating the Claimant's grievance, Ms Seymour asked Ms Omoregie to talk her through the Teams call of 9 March 2023. Ms Omoregie said of Ms Booth:

"she was annoyed I would say.

"She raised her voice It was not directed towards me or Rochelle specifically, directed to all of us, she was irritated by everyone."

She went on to say:

"She can be very direct"

"I think we have an ok relationship, I don't have a difficult relationship with her.

I know there are things she is passionate about, keen to keep finances in order etc"

(page 3973)

82. Ms Redding told Ms Seymour,

"There was certainly a tension, don't know what borne out of. It was uncomfortable, didn't need to be as assertive or in that tone. I did feel Rochelle just trying to do her job. Thought the tone and challenge was disproportionate."

(page 4003).

She highlighted another situation in which she perceived that Ms Booth's response to Ms Atri had been disproportionate. She said,

"It was disproportionate, don't know if would go so far as to say race."

83. In summary therefore, Ms Omoregie seemingly did not perceive Ms Booth's anger as having been directed solely at herself and the Claimant, whereas Ms Redding seemingly perceived it to be directed at the Claimant, since other than noting that Ms Omoregie was on the call she did not make any further reference to her when interviewed about the matter.

84. In her witness statement, the Claimant says:

"Elaine as a white female noticed that Cecile treated Jyoti, Adesuwa and I differently to her and other white colleagues even if Adesuwa and Jyoti wasn't it. Cecilie was empowered by Mr Gladstone to treat

Jyoti and I, as fellow directors differently, she was allowed to be disrespectful, aggressive and hostile and this made me very uncomfortable, nobody called it out. It is surreal that I experienced this in 2023, the level of blatant racism felt like we had gone back to the 1970s. It was so difficult to even bring myself to work at these times.”

However, that is not what Ms Redding told Ms Seymour. As we say, she did not refer to Ms Omoregie and certainly did not suggest to Ms Seymour that she perceived some difference in how she was treated by Ms Booth. Instead, she spoke of Ms Booth having responded disproportionately to the Claimant and Ms Atri on separate occasions, but otherwise said:

“I haven’t spoken to Rochelle about that meeting, haven’t fed back to her, what I have just said to you I haven’t fed back to her. I did share with Matt about respect, probably didn’t use that word.”

(page 4004)

85. Ms Atri told Ms Seymour that Ms Booth could be quite bullying in her tone in meetings. She referred to an occasion when Ms Booth was “absolutely going at another colleague, I tried to intervene, she had a go at me, jumped down my throat” (page 4000). Ms Atri was asked by Ms Seymour whether she thought there was a racial element to how she had been treated on another occasion. She replied,

“I think she is just a bully, she behaved like that to other people, other people also mentioned.”

86. It is reasonable to infer from her comments that the “other people” she had in mind were white otherwise she might have highlighted their colour or ethnicity given she was being asked her views as to whether there was a racial element to Ms Booth’s behaviour.

Detriment 8

On 13 March 2023, by MG excusing CB’s hostility towards C and asking C to resolve it and to adapt her own style to “challenging situations and emotional intelligence”. The comparator is Rachel Hickmott (white).

87. During a regular 1-2-1 with Mr Gladstone on 13 March 2023 the Claimant raised the issue of how Ms Booth had spoken to her the previous week. She alleges that he made excuses for Ms Booth’s behaviour, effectively made her responsible for the alleged harassment and told her to have a chat with Ms Booth to “to clear the air” and to reflect as needed. She contrasts her treatment with Mr Gladstone’s approach a few days later when he learned that Ms Abbott had allegedly been rude to the Claimant’s PA, Ms Hickmott and, according to the Claimant, insisted that she apologise for her behaviour. Mr Gladstone says that all he did was suggest to the Claimant that an apology from Ms Abbott might help.

88. The 13 March 1-2-1 notes are at page 2749 of the Bundle and simply record, “interactions with cecilie - some tension”. Mr Gladstone understood following a call with Ms Redding the previous week that Ms Booth had shouted at “them”; he does not clarify in his statement whether he understood “them” to be the Claimant, Ms Redding and Ms Omoregie, or just the Claimant and Ms Omoregie. This was not explored with Ms Redding when Ms Seymour met with her on 5 September 2023 as part of her investigation into the Claimant’s grievance. Mr Gladstone says that ahead of the 1-2-1 he did not have the sense that there was a major disagreement, since he had been copied into an email from the Claimant on 9 March 2023 in which she had written,

“As ever, we are all committed to collaborative working and the best interests of the City, so I truly hope no offence was caused by the mishap.”

(page 890)

89. Neither Mr Gladstone nor the Claimant provide a particularly detailed account of the 1-2-1 in their respective witness statements. In her statement the Claimant focuses entirely on her own situation, so there is no sense that she used the 1-2-1 to highlight perceived differences of treatment or how Ms Omoregie felt about the matter. There is no reference to Ms Omoregie or Ms Redding in the limited notes and nothing therefore to indicate a discussion around differential treatment. We conclude that the discussion on 13 March 2023 focused exclusively on tensions that had arisen between the Claimant and Ms Booth so that Mr Gladstone would have had no reason to think or even suspect that it was potentially about how two senior black leaders were being treated. Indeed, we find that this had not then crystallised in the Claimant’s own mind, and that it was only when Mr Gladstone suggested that Ms Abbott might apologise to Ms Hickmott for how she had behaved towards her that she began to perceive the events of 9 March 2023 in a different light. As we shall come to, equipped with that new perspective she took her concerns in confidence to Ms Pullen on 24 March 2023 when she spoke of Ms Booth’s “unconscious bias”. However, as of 13 March 2023, that was not how it looked to the Claimant or how she conveyed it to Mr Gladstone. His response is to be judged in terms of how he then understood the situation. In this regard, he discussed with the Claimant that Mr Flockhart might be helpful in terms of supporting her on governance issues, particularly where the Claimant perceived these to be risky for the City Council. That indicates to us that he was endeavouring to be supportive and that he was making a constructive suggestion as to how the Claimant might navigate any future differences of opinion with Ms Booth, in the further context he said that Ms Booth had not experienced challenge from the Claimant’s predecessor. We do not accept the Claimant’s characterisation of the discussion as Mr Gladstone simply expecting her to resolve situations of hostility.

90. Two days later, on 15 March 2023, the Claimant emailed Mr Morris-Jones regarding Ms Booth's involvement in a grievance raised by Employee A (see Detriment 11 below). Although the Claimant referred to difficult interactions with Ms Booth, there is no indication of any concerns in relation to Mr Gladstone. She wrote:

"My next steps as guided by Matt is to raise this directly with Cecilie, which I hope will improve things."

(page 953)

It was a private exchange with Mr Morris-Jones, yet there was no suggestion that Mr Gladstone had made excuses for Ms Booth or asked the Claimant to adapt her style, rather that he had "guided" her to raise her concerns with Ms Booth directly.

91. When he was interviewed by Ms Seymour about the matter on 31 July 2023, Mr Gladstone was asked what feedback he had given Ms Booth in the matter. He said:

I think we have values for a reason that's important, shouldn't be behaving like that we all have tough jobs which are under the spotlight.

That is consistent with his suggestion to the Claimant that she also raise the matter directly with Ms Booth.

92. We find that Mr Gladstone did not seek to excuse Ms Booth's hostility or expect the Claimant to tolerate or adapt to hostility, though he clearly encouraged her to raise the matter directly with Ms Booth. His encouragement to her to do so is not the same as simply telling her to resolve the matter herself. The 1-2-1 notes relied upon by the Claimant do not evidence any instruction having been given by Mr Gladstone. We find that he was encouraging and supporting the Claimant to have a direct conversation with Ms Booth about the matter, which was the emotionally intelligent way to resolve a situation of potential conflict between two senior colleagues, even if Ms Booth had undoubtedly behaved unacceptably the previous week.

Detriment 9

On 20 March 2023, by MG suggesting that Mark Greenburgh be C's executive coach.

93. The Claimant claims that Mr Gladstone directly discriminated against her, and harassed and victimised her when he suggested Mark Greenburgh as a potential executive coach for her on 20 March 2023. Mr Greenburgh acted for Birmingham in its dispute with the Claimant.

94. This is one of three matters in respect of which Mr Dennis submits that the Claimant has shown a tendency to misinterpret or misremember obviously innocent events as somehow targeted at her.
95. Mr Gladstone was questioned more than once on the basis that he and Mr Greenburgh were friends, something the Claimant herself does not allege in her witness statement. The fact that he initially could not recall Mr Greenburgh's name when he suggested him to the Claimant as a potential mentor/coach rather undermines any suggestion of a friendship or even mild acquaintance, or that he was aware of the Birmingham connection as the Claimant alleges.
96. The Claimant's case is as follows:

"This was another joke directed at "black" me, let's make her very uncomfortable. Mr Gladstone was trying to intimidate me and make me feel uncomfortable while at PCC knowing full well that Mark was acting for BCC in my race discrimination case.

This demonstrated that he pressured me to sign the settlement agreement with BCC and continued to stay in touch with BCC, and he wanted me to know that."

The evidence paints a different picture and, critically, it undermines the Claimant's central premise, namely that Mr Gladstone's agenda from her first day at Peterborough was to get her out.

97. Mr Gladstone first encountered Mr Greenburgh when he was the judge on an awards panel. It seems they also have a fairly tenuous connection in that Mr Gladstone worked at Rotherham Council for a period of time, leaving in 2013, and Mr Greenburgh was involved in preparing a report on the council some years later. It is unclear whether they were aware of that connection when they first met, indeed it is not clear whether the awards event pre-dated Mr Greenburgh's involvement at Rotherham. Nothing turns on the matter. They had met briefly and there is no obvious reason why they might have recalled the encounter when they met again some years later.
98. On 16 March 2023, Mr Gladstone attended the MJ Future Forum at which Mr Greenburgh was a speaker. Mr Greenburgh is a solicitor. He was presenting at a plenary session on the importance of the Golden Triangle and one of the key messages of his presentation was that effective governance and an effective Golden Triangle are key to improvement. We accept Mr Gladstone's evidence that he found it to be a thought-provoking, stimulating presentation and that it struck a chord with him. He thought of the Claimant and during a break he approached Mr Greenburgh and made some tentative enquiries as to whether he might be available as a mentor. Whilst we cannot be certain that he identified the Claimant by name (he told Ms Seymour in August 2023 that he believed he had, but the email at

page 1037 of the Bundle from Ms Midgley suggests that the Claimant was only identified to Mr Greenburgh by name for the first time on 24 March 2023), we are amply satisfied that Mr Gladstone came away from the event on 16 March 2023 without any appreciation that Mr Greenburgh had represented Birmingham in its dispute with the Claimant. Given that Mr Greenburgh is a solicitor who has a professional duty to keep his client's affairs confidential and that his client had concluded a confidential settlement agreement with the Claimant, he would very likely have been precluded from discussing the matter with Mr Gladstone even had the Claimant's name come up in conversation.

99. Mr Greenburgh is a legal professional with significant public sector experience, who was speaking on the subject of governance at a high profile forum for local government leaders. It is unsurprising therefore that Mr Gladstone pondered whether Mr Greenburgh might act as a mentor/coach for the Claimant given she was a solicitor, Peterborough's Monitoring Office, one of the Golden Triangle, and that governance was a key strand of Peterborough's improvement journey. It evidences to us that as at 16 March 2023 Mr Gladstone remained an ally of the Claimant and was actively thinking of how she might continue to be supported in what was a development role for her. His suggestion of Mr Greenburgh to her a few days later was not, as the Claimant asserts, a joke directed at her, nor was Mr Gladstone trying to intimidate her and make her feel uncomfortable or wanting her to know that he had stayed in contact with Birmingham. There is no evidence whatever that he was ever in contact with Birmingham.
100. During cross examination, the Claimant accepted that she first disclosed to Mr Gladstone on 5 April 2023 that Mr Greenburgh had been acting for Birmingham in their dispute. She wrote in an email to Mr Gladstone,

"I appreciate that you may not have know[n] this about Mark..."

We agree with Mr Dennis that there is no evidence to the contrary. Certainly, and contrary to what was suggested at one point to Mr Gladstone during cross examination, Birmingham's suggested geographical proximity to Peterborough, is not evidence that Mr Gladstone knew of Mr Greenburgh's professional relationship with Birmingham City Council.

101. Whilst Mr Gladstone believes a probation review meeting on 10 May 2023 marked a turning point in his relationship with the Claimant, in our judgement his contact with Mr Greenburgh at the Forum and subsequent suggestion to the Claimant of Mr Greenburgh as a potential mentor/coach served as a turning point in the Claimant's perception of Mr Gladstone. In a moment we shall address the Claimant's meeting with Ms Pullen on 24 March 2023, in the course of which the Claimant alluded to concerns that her dispute with Birmingham was being talked about at Peterborough, something that took Ms Pullen by surprise as she had not discussed the

Birmingham matter with anyone at Peterborough, but also because it had no obvious immediate bearing on the issues they were then discussing. It is all the more surprising that the Claimant raised the matter with Ms Pullen because her solicitors had written to Mr Greenburgh on her behalf and, ahead of her meeting with Ms Pullen, received a fairly emphatic response from Mr Greenburgh denying, as the Claimant's solicitors had alleged, that he had discussed the Claimant's performance with others. We accept Ms Pullen's evidence that when she pressed the Claimant on 24 March 2023 for further information as to "who, when and where", the Claimant was vague in her responses. We conclude that in the days following the Claimant's one-to-one with Mr Gladstone on 20 March 2023, during which Mr Greenburgh's name had been floated for consideration as a mentor/coach, the Claimant had speculated and ruminated as to what might have been discussed between Mr Gladstone and Mr Greenburgh, and that this escalated in her mind to the point that she began to suspect some impropriety when in fact there were no grounds for her to be suspicious of Mr Gladstone's motives or intentions towards her. It seems to us that when Ms Pullen pressed her on the matter on 24 March 2023 this served to briefly ground her suspicions, since she wrote in an email to Ms Pullen following their meeting,

"It is also encouraging to hear that difficult that I experienced and advised of, with Birmingham City Council are not impeding and/or pre-determining opinion on my ability."

(page 1029)

102. However, Ms Pullen's reassurances in the matter proved short lived. By 5 April 2023 the Claimant was writing to Mr Gladstone that she was "extremely alarmed and uncomfortable" at the suggestion that Mr Greenburgh might act as her mentor/coach, though tellingly she went on to say,

"I interpreted this as there was a conversation about me, which in mind felt inappropriate".

(page 1071)

It was an explicit acknowledgement on her part that she had inferred from the encounter between the two men that they had spoken about her dispute with Birmingham, something she in fact had no evidence for. It rather supports Mr Dennis' submission that the Claimant misinterpreted an innocent interaction as somehow targeted at her. At paragraph 264 below we highlight a further occasion when this happened.

103. By May 2023 the issue had snowballed in the Claimant's mind. In paragraph 7 of her detailed statement in support of her grievance she wrote of Mr Gladstone's alleged conduct on her first day at Peterborough:

“It affected my confidence and I started to question whether Matt was in conversations with BCC or their lawyers as it was odd why he was so interested and authoritative around this matter which was personal.”

(page 1570)

In other words, the Claimant had begun to reframe the events of 14 November 2022 in her mind as having somehow confirmed at the time that Mr Gladstone was already in contact with Birmingham and Mr Greenburgh.

104. The Claimant says that she subsequently spoke to Mr Greenburgh at a conference in June 2023 when she claims he told her that he knew Mr Gladstone as they had previously worked together. As we have noted already, they had a tenuous connection through Rotherham Council. Nevertheless, the Claimant says that her conversation with Mr Greenburgh,

“led me to question the integrity of Matthew in all situations.”

(paragraph 161 of her witness statement)

Her comments highlight again why we conclude that her past beliefs have, sub-consciously, been revised in certain respects to make them more consistent with her present beliefs.

105. Mr Gladstone’s low key response to the Claimant on the issue on 5 April 2023 (page 1071) ought to have drawn a line under the matter, yet in spite of his email, Ms Pullen’s assurances in the matter and Mr Greenburgh’s flat denial of any discussion, the matter has been pursued to trial in the terms set out in paragraph 96 above notwithstanding the lack of any evidence to support the Claimant’s views in the matter. Her complaint is without foundation.

Detriment 10

On 22 March 2023, by MG’s comment, “*diversity is why you are here*”.

106. The Claimant, Mr Gladstone and Cllr Hogg, the Leader of the Liberal Democrat Group on the Council) spoke briefly on 22 March 2023 in the Council Chamber following a full Council meeting. We do not have a witness statement from Cllr Hogg and he did not attend Tribunal to give evidence, though he was interviewed by Ms Seymour as part of her investigation into the matters raised in the Claimant’s grievance of 20 May 2023. When Ms Pullen was setting up their meeting, Cllr Hogg told her that he had no immediate recollection of any conversation but that he was,

“pretty sure that had [Mr Gladstone] or anyone else had said “diversity is why Rochelle is here” I would not only remember but would have taken the matter further.”

(page 2399)

107. By 8 August 2023 Cllr Hogg was able to provide Ms Seymour with some details of the exchange on 22 March 2023. His account is corroborated at least in part by the Claimant who agreed at Tribunal that he had spoken of CLT’s strength and congratulated Mr Gladstone on this, and that he had also referred to there being some strong women in the senior leadership. Cllr Hogg did not necessarily regard his comments as being about gender diversity, rather about strong leaders who know what they want to achieve. The Claimant agreed at Tribunal that Cllr Hogg had not said anything about race or racial diversity.
108. We do not uphold the Claimant’s allegation that Mr Gladstone made comments indicating, or that could be perceived as indicating, that she had been hired because she was black or otherwise that she was a diversity hire. In the course of cross examination she put forward evidence that is not in her witness statement, namely that Ms Bishop told her that she was a “diversity hire”, something Ms Bishop does not say in her witness statement, and that the Respondent had only appointed the Claimant so that it might appear inclusive following recent Tribunal proceedings. We find that during the brief discussion on 22 March 2023, Mr Gladstone merely concurred with Cllr Hogg’s statement that there was a strong leadership team in place, including strong, decisive women and that he acknowledged that the Claimant’s recruitment served to bolster CLT. We do not uphold the complaint.

Detriment 11

On 24 March 2023, by CB partially upholding the grievance against C and referring to “other grievances”.

109. On 30 January 2023, Employee A resigned her employment on three months’ notice citing that she had raised concerns about her excessive workload with both HR and the Claimant but, that her concerns had not been addressed adequately or promptly. Some weeks later she informed Ms Abbott that she wished to raise a grievance. Ms Soltysinska asked Ms Booth to investigate the grievance on the basis that the Claimant, Ms Abbott and Ms Omoregie might be named in the grievance. There is no evidence that Ms Booth was aware of the Claimant’s first protected act when she embarked upon the investigation or that the Claimant apprised her of it. Instead, we find that Ms Booth only became aware of the first protected act in or around May or June 2023 when there were discussions regarding the potential appointment of an Independent Panel to consider the Claimant’s future at Peterborough. In the course of her investigation of Employee’s A’s grievance, Ms Booth interviewed Employee A who alleged

that she had raised concerns regarding her workload with the Claimant in December 2022 and January 2023, and had been told to “brief everything out”. She believed that a locum solicitor was required. Ms Abbott told Ms Booth that she too had raised concerns with the Claimant in December 2022 regarding the team’s workload and had also requested that a locum be brought in but was told that any decision would need to await the outcome of the RedQuadrant review. It is not in issue that there were workload concerns. During her interview with Ms Booth, the Claimant referred to external solicitors having been briefed in certain matters.

110. Ms Booth partially upheld Employee A’s grievance. The outcome letter is at page 1018 of the Bundle.
111. The Claimant says that in the course of Ms Booth’s meeting with Employee A, Ms Booth compared the Claimant with her predecessor and she questions why this was appropriate. We do not read the investigation notes as she does. Instead, it seems clear to us that Ms Booth was seeking to gain a more complete understanding of the background and context, since the workload issues pre-dated the Claimant’s arrival at Peterborough, even if Employee A had seemingly reached some sort of inflection point within a few weeks of the Claimant starting. Whilst we agree with the Claimant that Employee A’s response to Ms Booth’s enquiries is potentially troubling, in so far as she described the Claimant’s predecessor as a “nice person” (and by implication therefore that the Claimant was not a nice person, even though Employee A was plainly not in a position to pass judgement on the Claimant’s character at such an early point in their working relationship), that does mean that it was inappropriate for Ms Booth to have asked Employee A how things had been before the Claimant joined the City Council. She was trying to understand what, if anything, had changed that might have prompted the grievance. In particular, it was possible that the grievance had been raised by Employee A with a view to being released with a payment in lieu of notice rather than out of a genuine sense of grievance. This was just one aspect that Ms Booth needed to consider. We do not agree with the Claimant that Ms Booth was making a comparison because she was black and her predecessor was white, or, as she says, that it was,

“a deliberate attempt to assassinate my character on record”.

112. Having re-read the notes of Ms Booth’s interview with Employee A, it is clear that Employee A’s grievance was directed at the Claimant. Employee A did not suggest that the Claimant was responsible for her excessive workload, rather that she had failed to respond to her concerns. She said,

“I couldn’t have been more explicit as the effect it was having on my wellbeing, and I thought it would count for something. HR knew about this from the start to finish. If own Director did nothing, then nobody else did either. I don’t understand how it was allowed to happen, or

not even to help. ... I have to walk away from my job, long term relationships can't replicate. Walk away from colleagues who I had built a relationship with."

(page 984)

113. She went on to say,

"Why was it allowed to happen? Feel worthless, not good for self-confidence, if it happened to me it could happen to my colleagues. Making sure it doesn't happen again. Looking for answers. Just don't know how it can be allowed to happen. One person decision making. Why was it down to Rochelle, why didn't HR step in."

114. The Claimant was informed of the grievance outcome at a meeting on 24 March 2023. She alleges that, "they were trying to spoil my annual leave". Whilst there is no evidence that was the case, given how the Claimant had been spoken to by Ms Booth on 9 March 2023 and that the tensions between them remained unresolved, we can perhaps understand why she sees it that way. The notes of the meeting record that Ms Booth told the Claimant,

"... I understand that getting a locum would have been a supportive measure to help with the work. ... I believe that a locum should have been brought in to support the team. I also believe that other people within the organisation, such as the HR team should have stepped in with actions as detailed above when the situation came to their attention. I also conclude that a locum should be appointed asap to support the team, although it is too late for Employee A."

(page 1025)

115. The decision letter issued to Employee A was similarly expressed:

"... I believe a locum should have been brought in to support you and the team, and this feedback will be given to Rochelle. I also believe that once your concerns came to the attention of the HR team, on 8 December 2022, they acted appropriately by giving advice to Michelle on initial actions of support to take. Whereby you feel that these actions and those taken by Rochelle, with the support of Michelle, to engage the services of an external Law firm since 27 January 2023 came too late, I feel that this was a step in the right direction in helping workloads going forward. I am therefore sorry that you felt unable to permit a little more time to allow this to demonstrate its impact by resigning on 30 January 2023.

... I should also acknowledge that Rochelle only started working for PCC in November 2022 and needed time to embed into her role.

... I am recommending for future reference, all managers and Directors of the Council are required to listen carefully and take positive action when members of the team are reporting work related stress, including bringing in additional resources in a timely manner if appropriate.”

(page 1018)

116. The Claimant additionally complains that during their meeting on 24 March 2023 Ms Booth referred to the possibility of other grievances. This was in the context of Ms Booth encouraging the Claimant to secure a locum to alleviate issues and tensions in the team pending the outcome of the RedQuadrant review. When the Claimant said she felt disappointed,

“my judgement as Director is invalidated, that’s how I feel”,

Ms Booth responded,

“No one is criticising you as a Director. I just need to take on board what your team are telling me. I can say categorically that depending on the outcome of this grievance, there may be further grievances or resignations coming. There are some very distressed people so this could help in the short term. If you decide to push back there could be a lot of difficulties within the team.”

(page 1026)

117. When the Claimant asked for further details Ms Booth replied,

“Not going to say as not part of this grievance. My advice is don’t push back. For your own sake take on board the suggestion – will help calm things down.”

118. As the meeting concluded Ms Pullen offered some reassurance to the Claimant. She said,

“You need to remember the grievance is against the Council and not directed at one person. It is how we respond to it overall.”

119. The Claimant questioned the accuracy of these notes for the first time during cross examination. We are satisfied that the notes are an accurate record of the meeting and agree with Mr Dennis that they evidence that in suggesting a locum, Ms Booth was trying to support the Claimant by heading off potential future grievances and even resignations. The fact that Ms Booth had lost her temper with the Claimant some weeks earlier does not alter our view of the matter. As we shall come to in due course, we conclude that Ms Booth can be quick tempered; the corollary in our view is that she is also quick to move on even if it may be less easy for

those at the sharp end of one of her outbursts to similarly put the matter behind them.

Detriment 12

On and after 24 March 2023, by Ms Pullen not addressing C's discrimination complaints which she raised that day.

120. The Claimant complains that Ms Pullen failed to address the Claimant's discrimination complaints when she raised these with her on 24 March 2023, or thereafter.
121. The Claimant deals with their meeting of 24 March 2023 at paragraphs 181 and 182 of her witness statement before going on to explain why she rejects the Respondent's assertion that her concerns were false and made in bad faith. She says that by this time she had "had enough", that

"I knew the games that were being played and was certain that I couldn't trust anyone at that organisation".

We understand this to be her assessment of the situation now rather than what she relayed to Ms Pullen, likewise when she says she was,

"tired of the charades, tired of the ill treatment, tired of racism, tired of being treated differently, tired of the hostility, tired of not being listened to."

122. Ms Pullen describes their meeting at paragraphs 17 to 24 of her witness statement. What she refers to as her 'crib notes' of the meeting are at pages 1030 and 1031 of the Bundle. Ms Pullen's perspective of the meeting with Ms Booth that preceded her meeting alone with the Claimant, namely that Ms Booth was calm, engaging and supportive is corroborated somewhat by the meeting notes and by Ms Booth's letter to Employee A setting out her decision on Employee A's grievance. We have referred to this already under Detriment 11 above.
123. Ms Pullen headed her notes of her meeting with the Claimant,

"Confidential (off record convo) not for sharing".
124. It is not in dispute that the Claimant told Ms Pullen that she had a sense of there being unconscious bias in Ms Booth's interactions with her. Whilst Ms Pullen's notes do not record the Claimant as having referred to it as a race bias, that certainly seems to have been how Ms Pullen understood the reference, particularly in the context of how the Claimant was said to have been spoken to in contrast to Elaine Redding, and the fact that Ms Abbott had been asked to apologise for allegedly unacceptable conduct whereas Ms Booth had not.

125. The Claimant says that Ms Pullen failed to tell her that she could raise a counter-grievance in relation to Employee A, or a grievance in respect of Ms Booth's handling of the grievance, including any alleged unconscious bias. We prefer Ms Pullen's evidence that she told the Claimant that she had options available to her if she felt that she wanted to raise the matter formally, or if she wanted Ms Pullen to take it further. Ms Pullen was not challenged during cross examination regarding her evidence that the Claimant had advised that she wanted to go on holiday and reflect on the matter. The day they met was the Claimant's last day of work before a two-week holiday. Regardless of the fact that Ms Pullen was not challenged in terms of her evidence in this regard, we find further support for the fact that the Claimant intended to use her holiday as an opportunity for reflection in the follow up email she sent Ms Pullen. She is an experienced solicitor, accustomed to documenting issues in writing, who had offered, as she said, a personal perspective on matters that had come across to her as inequitable / concerning. Her email concluded,

"It would be useful if we maintain the dialogue on these and other matters".

(page 1029)

In our judgement, that was not a request for any specific or immediate action on Ms Pullen's part.

126. When the Claimant returned from annual leave two weeks later on 5 April 2023, she emailed Ms Pullen at 09:01 am on her first day back at work. She wrote,

"Further to my email of Friday, there have been other matters that I have tried to interpret as "nothing to worry about", but given then current landscape, it is best that I flag thus now as these matters have caused me to be somewhat unsettled. As such, I would really benefit from support from the organisation, given that I am one of first, if not the only historical black leaders within Peterborough City Council. I will also be more vocal as to issues that I feel uncomfortable with going forward. Given the race protocol, there is a commitment to do better and call out matters such as these. Therefore it is imperative that we speak about these things.

Look forward to taking this further on my arrival."

(page 1064)

The reference to her email "of Friday" was a reference to her email of 24 March 2023.

127. Unfortunately, Ms Pullen did not see the Claimant's email of 5 April 2023. She was in back to back meetings all day, including a meeting with the

Claimant and Mr Gladstone later in the day when, it seems, the Claimant did not think to mention to Ms Pullen that she had emailed her that morning and that it was imperative they speak. That is unfortunate given she knew Ms Pullen was due to commence a period of extended sick leave the following day. We find that Ms Pullen finished work on 5 April 2023 entirely ignorant of the Claimant's email and ongoing concerns. Ms Pullen's emails were not monitored in her absence with the result that Ms Pullen only first became aware of the Claimant's email of 5 April 2023 at some point following her return from sick leave in or around mid-June 2023. The situation had by then moved on in so far as the Claimant had submitted a formal grievance, amongst other things in respect of the matters she had raised with Ms Pullen on 24 March 2023.

128. For completeness, we accept Ms Pullen's evidence that she respected the Claimant's request on 24 March 2023 that the matters discussed were confidential, off the record and not to be shared with others, including for the avoidance of doubt Mr Gladstone. Instead, we find that it was the Claimant who first revealed the discussion when she submitted her grievance on 20 May 2023 (see in this regard paragraph 29 of the grievance at page 1576 of the Bundle).

Second Protected Act

On 24 March 2023 by C explaining to Ms Pullen via Teams the inequality and difference in treatment as a black female member of staff that she was experiencing

129. We refer to our findings at paragraph 124 above, from which we conclude that the Claimant's various comments to Ms Pullen on 24 March 2023 constituted a protected act, alternatively that Ms Pullen believed she had done a protected act.
130. We do not uphold the Respondent's contention that the allegation was made in bad faith. Ms Booth had behaved unacceptably towards the Claimant earlier in the month, and had embarrassed, even undermined her in front of her peer and her direct report. In our judgement, it is entirely unsurprising that this led the Claimant to question the reason why Ms Booth might have behaved as she had. Even though, as we shall come back in our conclusions below, Ms Redding is not a direct comparator in terms of their treatment, it is understandable why the Claimant felt they had been treated differently.

Third Protected Act

On 5 April 2023 by C emailing Ms Pullen requesting support from the organisation relating to the treatment she was experiencing – given that she was/is the only black person in CLT.

131. The Claimant's email to Ms Pullen is replicated in full at paragraph 126 above. It made specific reference to her earlier email of 24 March 2023 in

which she had referred to “inequitable/concerning” matters and a need for unconscious bias training. The email of 24 March 2023 was in turn by way of follow up to the meeting of the same day, which involved a protected act and was understood by Ms Pullen to have been a protected act. The email of 5 April 2023 was effectively a reiteration of the Claimant’s concerns, indeed an escalation in so far as it suggested that, having reflected, she now perceived other matters as concerning, that is to say in addition to her existing bias and discrimination concerns. She was now plainly linking these concerns to her colour and, under the race protocol, her responsibility to “call out matters such as these”. ‘These’ matters were the matters she had discussed with Ms Pullen and, if she was calling them out under the race protocol that can only have been because there was a racial element to them, as Ms Pullen would have understood. The Claimant referred to the email in her grievance of 20 May 2023.

132. We cannot usefully add to what we have said at paragraph 130 above as to the Claimant’s alleged bad faith in the matter. We do not uphold the Respondent’s assertion that the Claimant acted in bad faith.

Detriment 13

On 5 April 2023, by Ms Pullen refusing C’s choice of executive coach.

133. The Claimant complains that Ms Pullen refused her choice of Ruth Heron as an executive coach. This followed on from the Claimant’s discussion of an executive coach with Mr Gladstone and his initial suggestion of Mr Greenburgh in that regard. We do not think Mr Dennis makes a good point when he says that Ms Pullen did not refuse the Claimant’s preferred coach insofar as she told the Claimant that if she wanted to use Ms Heron she would need to fund her services herself. The Claimant is self-evidently complaining about the Respondent’s failure to fund the costs of her preferred coach.
134. None of the Respondent’s witnesses, in particular none of those in senior leadership positions were questioned about their experience of mentoring and coaching at the Respondent, specifically the process, if any, by which mentors and coaches are identified and approved. In the absence of any identified comparator on this issue, the Claimant relies upon a hypothetical comparator. However, the fact that the Respondent’s witnesses were not questioned regarding their personal experiences in the matter deprives us of evidential material from which we might draw conclusions as to how a hypothetical comparator would have been treated. We should add that the Respondent has no documented policy on the use of mentors and coaches.
135. The Claimant’s request to engage Ms Heron was evidently considered while she was on annual leave at the end of March. Ms Pullen followed the matter up with Claire Gregory, Workforce Development Manager on 29 March 2023, when she asked her to engage with the Local Government

Association and SOLACE, a leading members network for Local Government professionals in the UK, to identify the names of individuals who might assist. She wrote,

“Essentially what PCC are looking for is someone who knows the MO role in detail and can support to develop Rochelle’s knowledge at Director level accepting that this is a development role for her. Would you be able to give both a call Thurs with this in mind please.”

(page 1040)

136. This prompted Ms Gregory to offer her view that what was strictly required was a mentor rather than a coach. Ms Pullen was evidently mindful of her own imminent absence and accordingly sought to progress the matter so as to be in a position to discuss the matter with the Claimant on her return from leave on 5 April 2023, this also being Ms Pullen’s final day at work for at least a couple of months. She chased the matter up with Debbie Hiller on 3 April 2023 as it became more pressing. By 5 April 2023, Ms Pullen had the names and biographies of various potential mentors, including Ms Heron. Whilst she described Ms Heron as, “more of a personal lifestyle mentor” she used the same term to describe all but one of the other mentors who had been identified by Ms Hiller. She reiterated to Ms Hiller that what was being sought was someone with Director level and Monitoring Officer experience. Suki Binjal was subsequently identified as a potential mentor; the profile at page 4290 of the Bundle confirms that Ms Binjal has previously held office with the Commission for Racial Equality, is (or was) an Advisory Board Member to Thompson Reuters Transforming Women’s Leadership in the Law Programme, was President of Lawyers in Local Government for two years, has strong governance credentials and is a highly experienced public sector solicitor. When Mr Gladstone put forward Ms Binjal’s name on 16 May 2023, albeit in terms that it was merely for the Claimant’s consideration and that there would doubtless be other names that SOLACE could suggest, the Claimant’s immediate response was,

“Happy to work with Suki, of whom I know very well, in any event.”

There was no suggestion then by the Claimant of an ongoing desire on her part to work with Ms Heron or that the Respondent’s unwillingness to support this was some form of discrimination.

Detriments 14, 15 and 21

In March / April 2023, by MG (on a date unknown) demoting C to a floating DRO role in the elections. [NB: C says she became aware of this matter on 24 April 2023]. The comparator is Employee B (white).

In April 2023, by MG not agreeing to cover C’s hotel expenses. The comparators are Rachel Edwards and Mark Emson (white).

On 4 May 2023, by MG cancelling C's shadowing of Mr Stevenson without consultation. The comparator is Employee B.

137. Whilst it is undoubtedly the case that Ms Edwards' communications with the Claimant in the weeks leading up to the elections were not as clear as they might have been, in our view, the Claimant's perception of the 4 May 2023 local elections has been informed by the events of 3 May 2023, when she was told by Mr Gladstone that he was considering extending her probation period.
138. The Claimant alleges that she was demoted to a floating DRO (Deputy Returning Officer) role in the elections, a decision that she says was taken by Mr Gladstone as the Returning Officer. She seeks to contrast her treatment with that of her predecessor, Employee B. The Claimant relies upon the fact that she had attended a course on 8 March 2023 for Returning Officers and their Deputies. In the lead up to the elections the Claimant had also attended a 'mock count' training session delivered by Ms Edwards, Mr Emson and Mr Gladstone intended for Count Supervisors and 'Full Powers' DROs, on the process for verification and counting of votes.
139. As Head of Constitutional Services, Ms Edwards is responsible for the electoral register at Peterborough and its election functions. She is also a Deputy Returning Officer. She perceived the Claimant to be out of her depth at a pre-election meeting on 6 March 2023.
140. There were two 'Full Powers' DROs for the 4 May 2023 elections, namely Ms Edwards and Mr Emson. The email exchanges at pages 917 – 923 of the Bundle evidence that the Claimant and Ms Edwards were at cross purposes in terms of the Claimant's standing at the elections and what part she would play in them. In fairness to the Claimant, it seems to us that it was Ms Edwards who failed to grasp this and communicate the position more clearly. Notwithstanding her own extensive experience of elections, she failed to convey the arrangements with sufficient clarity to the Claimant. Be that as it may, by 24 April 2023 she was clear that the Claimant would merely be shadowing a DRO on election night albeit she would be paid the relevant DRO fee even though she had not been appointed as a DRO. The Claimant replied,

“Ok thanks Rach my misunderstanding”.

And when Ms Edwards later said the Claimant would be shadowing a range of people at all hours of the day, she replied,

“Sure no probs”

It seems therefore that the Claimant accepted Ms Edwards' explanation at the time and had no concerns.

141. We accept Ms Edwards' evidence that the training and 'mock count' session did not qualify the Claimant for appointment as a DRO and that it can take years of experience to understand the full process of an election in order to warrant appointment as a 'Full Powers' DRO. We also accept Ms Edwards and Mr Gladstone's evidence that Employee B had approximately 20 years' experience of elections as a DRO whereas the Claimant's prior experience was limited to acting as a Count Assistant at previous elections when she was at Hounslow Council.
142. The Claimant seemingly remained content with the arrangements as late in the day as 2 May 2023. When one of the Count Supervisors announced that they would be unavailable for the count, Ms Edwards spoke to Mr Emson and they agreed that the Claimant should assume the role given she had attended the 'mock count' session. When she was informed of this, the Claimant responded to say that she was happy to help in any way she could.
143. Although Employee B is the Claimant's nominated comparator within the List of Issues, in her witness statement the Claimant seeks to contrast her treatment with the fact that her direct reports were DROs. However, and as we shall come back to, the issue is not one of seniority or status but of experience and if by her direct reports she is referring to Ms Edwards and Mr Emson, it cannot realistically be suggested by the Claimant that her experience of elections was comparable to theirs or justify her claim to have been embarrassed and ashamed throughout election night and made to feel like an office junior.
144. The Claimant asserts that Mr Gladstone deliberately treated her differently to everyone else. However, Mr Gladstone's notes of their very first one-to-one on 22 November 2022 documents that he discussed with the Claimant that she would need "to look consciously at what she [could] do" given her limited experience of elections. We are satisfied that Mr Gladstone maintained an open dialogue with her on the issue and that they discussed her having a Floor Manager role at the elections, acting as an extra pair of eyes. There is no evidence of the Claimant being told that she would be a DRO, whether with full or limited powers, or of Mr Gladstone taking action to demote her from either role. If the Claimant believed she would be a DRO, on the strength of her email of 24 April 2023 referred to, that was a misunderstanding on her part.
145. As regards the Claimant's complaint that Mr Gladstone would not agree to cover her expenses, Mr Gladstone has no recollection of being asked by the Claimant to authorise her hotel expenses. Mr Chapman who acted as a 'Limited Powers' DRO states that he did not have his hotel expenses paid. The evidence in the Bundle supports that there was no decision as such in relation to the Claimant's hotel expenses, rather that Ms Edwards responded to an email enquiry from the Claimant's PA, Ms Hickmott in which she had sought confirmation that the Claimant two-night hotel stay could be recharged to the democratic services budget. Within four

minutes of the matter being brought to her attention, Ms Edwards emailed the Claimant stating,

“Hotel charges are payable by the individual, other than myself and Mark, who Matt agreed the council would fund.

All other directors and officers have paid for themselves.”

146. There is nothing to indicate that Ms Edwards had checked her understanding with Mr Gladstone before responding to the Claimant. The Claimant did not follow the matter up herself with Mr Gladstone, particularly if she felt that discretion should be exercised in her favour given how far she lived from Peterborough. As Ms Edwards reported to her, she would have understood that any authority in the matter did not ultimately rest with Ms Edwards, rather it would be a matter for Mr Gladstone.
147. In our conclusions below we address the reasons why the Claimant's expenses were not paid.
148. The Claimant's allegation that Mr Gladstone cancelled her shadowing of Mr Stevenson does not get off the ground. She shadowed Mr Stevenson on 4 May 2023. Mr Stevenson was simply delayed in catching up with her because he was allocated additional polling stations to visit which meant that he returned to the Town Hall up to an hour and a half later than expected following his first round of visits. It had been tentatively arranged that the Claimant would shadow him from around 9am, namely around the time he was expecting to commence his second round of visits. Her claim in her witness statement that she was due to shadow him from 7am is at odds both with paragraph 15 of her Amended Grounds of Claim and with her diary which said “Shadow Ben (Times TBC)” from 9am (page 1448). Even the 9am start was to be confirmed. The delays meant that the Claimant did not go out with Mr Stevenson for his second round of polling station visits until 11am. She accompanied him to each of the polling stations. No reasonable worker in her situation would consider themselves to have been disadvantaged in the matter. The fact that Mr Gladstone had got an early start and accompanied Mr Stevenson on the first round of visits is not evidence that he interfered in the arrangements between the Claimant and Mr Stevenson, let alone that he did so for a proscribed reason. For completeness, we agree with Mr Dennis' observations in relation to the Claimant's reliance upon Employee B as a comparator. The Claimant has not explained why they are a comparator, nor has Ms Banton addressed the matter. As Mr Stevenson says: “I was never asked to take Employee B on any polling station visits”.
149. The complaint in respect of Detriment 21 is not well founded.

Detriment 16

On 6 April 2023 at a 1-2-1 meeting, and at the subsequent CLT meeting in April 2023, by MG suggesting that C needed to lead matters personally. The comparator is Simon Lewis (white).

150. The notes of the 1-2-1 meeting are at page 601 of the Bundle. They evidence that Mr Gladstone gave feedback to the Claimant that she needed to lead more on the RedQuadrant review or, as he went on to say, she needed to lean in and shape the structure and culture. Mr Gladstone's recollection is that they met around 1pm. He describes it as a constructive meeting, which the meeting notes tend to bear out. In this regard, we accept Mr Gladstone's evidence that he makes notes of 1-2-1 meetings as they are in progress and then sends them to both himself and the attendee either at the end of the meeting or shortly thereafter. His notes are therefore a contemporaneous record of what has been discussed and if there is anything in them that the other person disagrees with or wishes to add to, there is obviously the ability for them to email Mr Gladstone on the matter whilst it is fresh in their mind.
151. Whilst the complaint is framed in terms that Mr Gladstone said the Claimant needed to lead on matters generally, the notes do not support this. That said, later in the day, Mr Gladstone and Ms Pullen spoke when, according to Mr Gladstone he shared certain concerns with Ms Pullen regarding the Claimant's ability to drive forward not only the RedQuadrant review but also the commercial entities work. But if that suggests that Mr Gladstone had in fact raised the commercial entities work with the Claimant during their 1-2-1, all it would evidence to us is that Mr Gladstone was providing her with consistent feedback as to the areas for focus and firmer leadership.
152. Mr Gladstone's 1-2-1 notes include the words, "more under the bonnet". We accept his evidence that these comments were made by the Claimant, evidencing to us that she too recognised the need to get her hands dirty on the issue. We also accept his evidence that this was not the first time he had given such feedback, even if he perhaps expressed himself more directly in the matter on 6 April 2023. The Claimant accepted during cross examination that she was responsible for the RedQuadrant review of Legal Services and was the relevant CLT lead. Indeed, the review was one of her documented objectives, yet in the course of her evidence at Tribunal we observed the Claimant to deflect attention away from her responsibilities in the matter and to focus instead on Ms Booth, including Ms Booth's relationship with RedQuadrant, whom the Claimant described as "friends". She also referred to the review as being "badged as independent", the implication being that Ms Booth intended to dictate the outcome of the review on the strength of her friendship with RedQuadrant. Indeed, the Claimant referred to "behind the scenes" conversations without offering any further evidence in that regard. She also said she doubted RedQuadrant's credentials but again did not elaborate. We accept Ms

Booth's evidence that RedQuadrant was retained following a proper procurement exercise.

153. As Chair of the Improvement Panel that oversaw improvement at the Respondent, Ms Kelly had monthly discussions with Mr Gladstone to review the City Council's progress, during which they spoke about the challenges he faced in his role. Ms Kelly's unchallenged evidence is that she understood the Claimant not to be an effective team player and that she seldom contributed in the formal Panel meetings. We shall come back in a moment to what she says about the commercial entities work and the effectiveness of the Golden Triangle.
154. We prefer Mr Gladstone's evidence in relation to Detriment 16 to the Claimant's. His evidence is specific, consistent and, critically, it is corroborated by his contemporaneous notes, including the Claimant's acknowledgement that she needed to get "more under the bonnet" in relation to the review of Legal Services. The Claimant's evidence by contrast amounts to little more than broad assertions and unsubstantiated innuendoes regarding Ms Booth's relationship with RedQuadrant. In our conclusions we shall come back to the question of whether Mr Gladstone's conduct of and comments during the 1-2-1 meeting on 6 April 2023 related to or were materially influenced by the Claimant's race or any protected acts of hers

Detriment 17

On 11 April 2023, by CB sending photos of almost naked black women to the CLT WhatsApp group.

155. This complaint relates to two photographs that Ms Booth sent to a CLT WhatsApp group on 11 April 2023 whilst on holiday in Brazil (pages 1075 and 1078). In her witness statement, the Claimant is also critical of comments by Ms Booth two days later regarding the statue of Christ the Redeemer in Rio (page 1082). The Claimant was the only black member of the WhatsApp group; indeed, all the others were white. The second of the two photographs is of a black woman in carnival dress. We do not think it appropriate to describe her as almost naked, as Ms Banton does. However, the woman in the first photograph does appear, at first glance, to be naked except for a plume of green feathers protruding from her head. The woman is photographed from behind. Her long hair conceals that she is in fact in carnival costume; her buttocks, legs and thighs are all on show. The woman is in the foreground; beyond her in the background are the lower halves of five seated individuals, four of whom appear to be white and at least one of whom appears to be an older woman. There is at least one other female and, given her attire, she seems to be much younger. None of their faces are visible in the photograph. The context, as Mr Dennis says, is that Ms Booth was on holiday in Brazil and, according to the messages that accompanied the images, she had had three Samba dance lessons, about which she joked in a self-deprecating way. Mr

Dennis makes the point that these were not random pictures downloaded from the internet and that it would have been reasonably apparent to the WhatsApp group, including the Claimant, that the woman in question was performing in an organised show for tourists. Nevertheless, in forwarding the first photograph Ms Booth drew attention to the performer's scanty attire, writing,

"The Brazilian samba is a bit racy..."

(page 1075)

156. The second photograph was sent over two hours later and arguably provides some further context, namely that Ms Booth was in good spirits on a much needed holiday. We shall come back to this in our conclusions. The only other particular point to note is that this was a little over two weeks after Ms Booth's decision on Employee A's grievance and a few days after the Claimant had herself returned from annual leave and emailed Ms Pullen stating her intention to be more vocal as to issues she felt uncomfortable with.

Detriment 18

On 24 April 2023, by MG, at another meeting and in the presence of HR, ambushing C about another grievance made by [Employee C] against her.

157. The Claimant alleges that Mr Gladstone ambushed her on 24 April 2023 with a grievance by Employee C.
158. Employee C submitted a 13-page grievance on 14 April 2023. It included a number of complaints about the Claimant. The grievance is at pages 1316 to 1328 of the Bundle.
159. The Claimant met Mr Morris-Jones on 18 April 2023 when he referred to a possible complaint against her. The Claimant was and remains perplexed by the matter as she says Employee C was on sick leave throughout her time with the Respondent. However, in the grievance Employee C clearly states that she is aggrieved with the Claimant and sets out in some detail the reasons for this, including that the Claimant had allegedly asked for correspondence to be sent to her for comment, notwithstanding she was absent from work following a cancer diagnosis. She goes on to assert that the matter in question was handled in such a way as to harm her professional reputation. Employee C also complained about the Claimant's appointment, asserting that she (Employee C) had been discriminated against as a disabled person in not being considered for the role. We are careful not to express any view as to the merits of those or any other allegations of hers, since we are aware that they are the subject of a live claim in this Tribunal.
160. The Claimant had a scheduled catch-up meeting with Mr Gladstone on 24 April 2023. When they met, Ms Spendelow was also present. Ms

Spendelow had confirmed to Mr Morris-Jones on 18 April 2023 that she and Mr Gladstone would be meeting with the Claimant the following week to make her aware of the grievance. This aspect was not explored with Mr Morris-Jones in cross examination, for example, whether when he met the Claimant on 18 April 2023 he had informed the Claimant of Mr Gladstone and Ms Spendelow's plan to discuss the matter with her and, if not, why not.

161. We do not accept the Claimant's description of the discussion on 24 April 2023 as an 'ambush'. The emails at pages 1330 and 1331 of the Bundle certainly give no indication of any intention to ambush the Claimant, rather to ensure that she was kept informed in the matter. We find that she was given a brief 'heads up' by Mr Gladstone that there was another grievance against her. We note in particular that Mr Gladstone agreed to the complaint being investigated externally. In our judgement those are not the actions of someone who wanted the Claimant out and was seeking to ambush her with a grievance.

Detriment 19

From early May 2023, by MG allocating work on commercial entities to C that should have been allocated to Simon Lewis (white) per his job description.

162. The Claimant alleges that Mr Gladstone allocated work on commercial entities to her that should have been allocated to Simon Lewis.
163. Although there are various references in the Claimant's witness statement to the commercial entities work, she has not addressed Detriment 19 within a designated section in her witness statement, save perhaps insofar as it overlaps with Detriment 26 which is dealt with at paragraphs 357 to 363 of the statement. The complaint involves no more than a bare assertion on the Claimant's part, as she has failed to provide any further particulars of the specific tasks which she says were allocated to her rather than to Mr Lewis or when and how they were allocated to her. She has the burden of establishing the primary facts and in our judgement has failed to discharge her burden in the matter. Mr Gladstone was questioned at Tribunal about the Claimant's and Mr Lewis' respective job descriptions, but the descriptions only take us so far but no further in terms of identifying specific tasks in respect of which we might make findings.
164. Mr Dennis makes the simple and rather obvious point that the Claimant's job title indicates why she might have been responsible for leading on the commercial entities work, given as we accept that it had a significant governance element to it. By contrast, Mr Lewis' role was more limited, being focused on the commercial management aspects. In her second week at Peterborough, the Claimant was copied into an email to Employee B in which it was noted that Mr Lewis, who was due to start with the authority in January 2023, would be responsible for performance reporting, but "not the governance". If there was some inevitable overlap in terms of

their roles, the Claimant was the relevant CLT Lead, whereas Mr Lewis was not on the CLT.

165. We agree with Mr Dennis' submission that the governance arrangements in respect of the commercial entities was a key priority for the Claimant. Poor governance in respect of commercial entities was recognised at the time to be a significant risk for local authorities. The Claimant highlighted the issue within the presentation she delivered as part of the recruitment process (page 537). The work was also noted as a personal target for the Claimant during her 1-2-1 in early January 2023. In February 2023 she produced a document which identified her priorities in relation to governance, including "Implementation of an overarching approach to governance and oversight of the Council's commercial entities". Whilst the wording of Mr Gladstone's email of 11 April 2023 at page 1126 of the Bundle could lend the impression that the Claimant only took the CLT lead on the issue at that point in time, the other materials we have just referred to demonstrate otherwise. We accept Mr Gladstone's evidence that it was also something that was regularly discussed between them and, as he describes in paragraphs 9 to 12 of his witness statement, that these discussions and the Claimant's understanding effectively began during her recruitment.
166. We note that in April 2023 the Claimant questioned the accuracy of certain minutes; she said, "it is referenced that I said we have a grip on commercial entities but I don't recall saying that". That implies some recognition on her part that the team she led was responsible for gripping the issue, even if it had not yet done so.
167. By May 2023 the Claimant was struggling under the weight of the demands of her role. As Chair of the Improvement Panel and given her experience of leading a large London Borough for ten years, Ms Kelly was well placed to bring an independent, seasoned, objective perspective to bear. She seemingly did not consider the Claimant to be an effective team player. She says that the Improvement Panel had ongoing reservations and concerns around the commercial entities work and the Respondent's failure to fully grip the complexities. When the Panel met on 18 May 2023, it formally recorded that,
- "The Improvement Panel reiterated the Council still had work to do in order to get to grips with the Council's commercial entities."
- (page 4154)
168. The notes of the Claimant's verbal update to the Panel on that occasion (page 4151) stand in contrast to the updates from her colleagues in terms of their substance. They certainly do not convey that she, or indeed the Respondent, was confidently on the front foot in relation to governance of the commercial entities. Instead, they convey limited concrete progress.

169. As we say, the Claimant's witness statement fails to engage sufficiently with this aspect of her claim. In cross examination she claimed that the alleged allocation of work "was about swamping me". That sits uneasily with her email of 11 April 2023 in which she said she was happy to take the lead.
170. We agree with Mr Dennis that the Claimant has failed to establish that she was allocated work on commercial entities that should have been allocated to Mr Lewis. We do not uphold her complaint.

Detriment 20

On 3 May 2023, by MG informing C that he was thinking of extending her probation period. The comparator is Ms Booth (white).

171. Having joined the Respondent on 14 November 2022, the Claimant's probation period was due to end over the weekend of 13 / 14 May 2023. Ahead of a regular 1-2-1 with the Claimant, Mr Gladstone discussed her performance with Ms Pullen and Ms Spendelow, as he says he was concerned she may not be performing to the level needed for someone in the role.
172. Some weeks earlier, in March, Ms Pullen had asked Ms Midgely whether Mr Gladstone was having regular documented meetings with the Claimant. She said,

"I am hearing a number of reports that the breadth and depth of knowledge / understanding is a cause for concern in some areas – I heard another situation just the back end of last week."

(page 877)

Ms Pullen did not go into any further detail though stressed the importance of the Claimant's probationary notes being, "captured against expected objectives". Ms Midgely responded to say that she had transferred "the notes" (by which we understand her mean to mean the 1-2-1 notes/reflections) into the correct template. She also told Ms Pullen that in Mr Gladstone's 1-2-1 with the Claimant that week, Mr Gladstone had picked up with her on issues of style and the importance of reflecting changing situations; this was the discussion that forms the basis of Detriment 8 which we do not uphold both for the reasons set out at paragraphs 87 to 92 above and in our conclusions at paragraph 333 below.

173. In April 2023, Mr Gladstone spoke with Ms Kelly who suggested that he speak to Andrew Flockhart, the Governance Lead on the Improvement Panel who had described the Claimant as lacking self confidence in the role, daunted around CLT and the Director role, and out of her depth. He questioned her level of judgement around decision making. Such feedback, coming from someone who was part of a Government appointed

Panel with oversight of the Respondent's Improvement Plan, would have been of particular concern. Mr Flockhart's feedback was consistent with two areas of particular concern for Mr Gladstone, namely the Claimant's failure to drive the RedQuadrant review of Legal Services and to lead and manage a somewhat dysfunctional Legal and Governance Team. We accept that Mr Gladstone was additionally understandably concerned about the relationship between the Claimant and Ms Booth which we agree had changed in the aftermath of Ms Booth's conduct on 9 March 2023 and decision on Employee A's grievance. There were also reported tensions around the preparation of the Annual Governance Statement and concerns being expressed by the Finance Team. Ultimately, it is not necessary for us to make detailed findings in relation to these various matters since the more pertinent question is whether Mr Gladstone had genuinely held concerns around the Claimant's capability and potential to develop in the role and perform at the requisite level and, if he did, whether his views were materially influenced by her race or any protected acts of hers. On the first issue, we are in no doubt that the concerns detailed in paragraphs 68 to 70 of Mr Gladstone's witness statement reflect his thinking at the time and were genuinely held. As we have noted already in relation to Detriment 16, the Claimant herself had recognised the need to be "more under the bonnet" in relation to the RedQuadrant review. Yet by 18 April 2023, Ms Spendelow was reporting that RedQuadrant had shared that the Claimant was still not involved in the review and that staff did not feel trusted.

174. One of the Claimant's criticisms of Mr Gladstone is that she says he conflated the probation review process with the appraisal process, and in so doing that he judged her against her full year objectives for 2023/24 when they were just a few weeks into the new financial year. At the beginning of 2023 Mr Gladstone had reminded CLT of the need to discuss and agree performance targets and outcomes through to the year end. In March 2023, Ms Midgely emailed CLT to say that their meeting on 14 March 2023 would be an opportunity to collate priorities and outcomes for 2023/24. It is clear from her email, and as Mr Gladstone said at Tribunal, that it sat with each individual member of the CLT to identify priorities for the year ahead in readiness for a group discussion of these. When Mr Gladstone later asked Ms Midgely for a copy of the Claimant's objectives on 29 April 2023, he noted that these did not include her priorities in relation to the commercial entities, including what he referred to as "getting shareholder, committee and operation effective". The further detail of what was meant in that regard is fleshed out in the notes of the subsequent probation review meeting on 10 May 2023 (page 2154).
175. We agree with Mr Gladstone that he was not, as has been suggested, conflating two processes, rather that insofar as he had regard to the Claimant's priorities and outcomes for 2023/24 this was in the context of giving active thought ahead of her probation review meeting to the Claimant's achievements to date in role and how she was tracking in terms

of the issues discussed in their regular 1-2-1s and detailed within her medium to long term objectives.

176. Rather than simply raise his concerns with the Claimant during the end of probation review meeting itself, Mr Gladstone informed her in advance of his concerns in the matter. He had been advised to do so by Ms Spendelow. We do not think either of them can be criticised for proceeding in this way. Ms Spendelow also advised Mr Gladstone to request that the Claimant undertake a self-evaluation of her performance, something Mr Gladstone had himself undertaken as part of his own probation review and ongoing appraisal. The Claimant did not take the suggestion well. Her email later that day and subsequent letter of 9 May 2023 (respectively, pages 1432 and 1433, and 1461) evidence that she was resistant to providing any self-evaluation on the basis she believed this was not part of the documented policy. We think her stance was unhelpfully defensive, and that she was failing to see the bigger picture. We do not overlook that in the moment on 3 May 2023 the Claimant may have been caught off guard and would have been understandably disappointed or upset, even angry, to be told by Mr Gladstone that he was considering extending her probation. However, by 9 May 2023 she would have had an opportunity to reflect and ought reasonably to have understood the value of a self-evaluation even if she felt that the Respondent's probation procedures had not been adhered to.
177. Whilst Mr Gladstone was not, of course, at risk of losing his job, when he received the Claimant's three-page letter of 9 May 2023 (pages 1465 to 1467), which was implicitly critical of him, his immediate response was conciliatory and he endeavoured to offer the Claimant some reassurance. He wrote,

"As discussed I have not made any decision about probation. I am really keen for you to provide some short notes around progress / achievements or impact in relation to the objectives we agreed collectively. It would be useful to share these in advance if possible. I am simply looking to hear about your perspective on progress and further plans around the objectives such as the constitutional review, governance arrangements around our commercial entities and the review of legal and governance. This can be in whatever format you see fit."

(page 1431)

In our view, there can be no criticism of that approach. He was inviting the Claimant's perspective on her probation period.

178. During the meeting on 3 May 2023, Mr Gladstone referred to the Claimant as "aggressive". This prompted the Claimant to contrast the behaviours of Ms Booth and Cllr Fitzgerald, both of whom she said acted in an aggressive manner but were not criticised for their behaviour or style. In

her email to Mr Gladstone immediately following the meeting, already referred to, the Claimant said that the comment had been made when she had “confidently articulated” her point to him. As it was a 1-2-1 meeting, no one else was present and the meeting was not minuted. However, the Claimant’s email obviously serves as a contemporaneous record of the Claimant’s perspective of the meeting. Mr Gladstone replied,

“As I said in the meeting I have apologised for using the term aggressive”.

Otherwise he did not dwell on this aspect, focusing instead on his belief that he had supported the Claimant and, as we have just noted, encouraging her to provide some short notes around achievements.

179. Mr Gladstone says that he apologised to the Claimant for using the term “aggressive” because he was trying to diffuse a tense situation. In his witness statement he describes the Claimant’s tone and style on 3 May 2023 as having been defensive and aggressive. There is certainly support for his description of her as defensive in so far as she was resistant to the suggestion of a self-evaluation. As to the disputed suggestion that she was aggressive, there is a not dissimilar dispute between them as to how the Claimant conducted herself at their meeting a week later on 10 May 2023, when Mr Gladstone alleges that her behaviour was challenging and unprofessional. Our findings in relation to the 10 May 2023 meeting are set out at paragraphs 196 to 206 below. In summary though, we find that the Claimant was challenging and unprofessional in her approach on that occasion. The Claimant asserts that Mr Gladstone’s (accurate) description of her conduct on 10 May 2023 as “challenging” and “difficult” was in order to deflect from his own harassing conduct and “to invent fault where there was none”. Her assertions in that regard are unfounded, indeed unsubstantiated in that she does not identify any other specific unwanted conduct of his on 10 May 2023 that created an adverse environment for her and which she says he was seeking to deflect attention from by labelling her as challenging and difficult. In any event, he was not seeking to invent fault where he believed there to be none, as he had genuinely held concerns.
180. The Claimant’s conduct of the meeting on 10 May 2023 is something we weigh in the overall balance when we consider whether Mr Gladstone’s description of the Claimant on 3 May 2023 as aggressive was because, as the Claimant asserts, consciously or otherwise, he felt she should know her place and that her race required her to be submissive and not speak up for herself. We shall come back to this in our conclusions.
181. Mr Gladstone claims that the Claimant asked him during their meeting on 3 May 2023 whether he wanted to have an off the record conversation. This was a term she had used some weeks earlier when she spoke with Ms Pullen on 24 March 2023. The Claimant denies suggesting an off the record conversation with Mr Gladstone. Mr Gladstone’s recollection in the

matter finds some support in the Claimant's actions in contacting acas two days later on 5 May 2023 to commence early conciliation. It lends further weight to Mr Gladstone's overall account of the meeting on 3 May 2023.

Fourth Protected Act

On 3 May 2023 C complained of racial discrimination to MG

182. The Claimant's specific evidence as to what she said that amounted to a protected act is as follows:

273. I complained to Mr Gladstone that I was being "treated differently", "unpleasantly", and being subjected to an unjustified "witch-hunt", due to my "race" – false complaints by racist staff. I also referenced my earlier and first Protected Act (my race grievance against Birmingham Council) and Mr Gladstone's negative reaction to that (he demanded that I sign a settlement agreement with Birmingham City Council).

274. I stated that Mr Gladstone was considering the extension of my probationary period because I had raised issues of "inequality" and "simply because my face does not fit". Thinking back, I was never going to pass my probation given that threat made to me on my first day of employment.

275. I added that I had suffered a "extremely difficult" working environment due to my being a "black leader".

183. Mr Dennis analyses the matter in some detail at paragraphs 215 to 225 of his written submissions. Unfortunately, we do not have the benefit of Ms Banton's submissions.
184. As Mr Dennis does, we note that when the Claimant emailed Mr Gladstone following their meeting (see below) she did not say that the different, unpleasant treatment she had allegedly experienced, or the unjustified "witch-hunt" was race related, nor did she refer to false complaints by racist staff. Similarly, her alleged reference to Mr Gladstone's negative reaction to her first protected act does not quite reflect what she wrote in her subsequent email, namely "I reminded you of my first day in employment with Peterborough City Council, in which you told me that I needed to sign the settlement agreement with Birmingham City Council, in relation to the experiences around race I had there." We agree with Mr Dennis that the words "in which I told you ..." reflect that the Claimant was expanding upon, rather than simply reiterating what she had said during their meeting. The fact she had reminded Mr Gladstone of her first day accords with Mr Gladstone's recollection that the Claimant said to him, "You know about my difficulties and dispute with Birmingham" (or words to that effect). In a similar vein, we agree with Mr Dennis that the allegation that Mr Gladstone was considering an extension to the Claimant's probation period because she had raised issues of inequality and because her face

did not fit, was a new allegation raised in the email rather than a record of what had been discussed during their meeting. That much is clear when one reads the Claimant's email of 3 May 2023, in which her grammar notably moves from the past to the present tense when she raises this aspect; likewise her claim to have experienced an extremely difficult working relationship due to being a black leader. We are in no doubt that by 3 May 2023 the Claimant was increasingly of the view that Ms Booth had discriminated against her, at the very least because of unconscious bias. She was also unsettled by Mr Gladstone's contact with Mr Greenburgh and suggestion that he might be a potential mentor/coach. However, we conclude that she did not verbalise her concerns during the meeting on 3 May 2023 so as to do a protected act within the meaning of section 27(2) of the Equality Act 2010. In our judgement, in context, the Claimant's statement to Mr Gladstone that she had experienced different, unpleasant treatment at Peterborough and that there was a witch-hunt was not an allegation that the City Council had contravened the Equality Act 2010, nor understood by Mr Gladstone as such.

Fifth Protected Act

On 3 May 2023 at 3.29pm, C emailed MG to complain about the discriminatory hostile working environment to which she had been subjected. MG

185. As we have just noted, in the Claimant's email to Mr Gladstone of 3 May 2023, following their meeting that day, she expressed how upset she was at being called "aggressive", referred to "numerous occasions" when she had been treated "differently and unpleasantly" and also raised the Birmingham issue. She went on to say,

"I strongly believe that these and other negative experiences that I have been subjected to here at Peterborough City Council[R], are because of my race. ... I left an organisation to escape discrimination and have experienced exactly the same thing here.

... the last 6 months here have been extremely difficult for me as a black leader. I also hope that you will take these concerns seriously and actively challenge discrimination"

(page 1428)

186. The Respondent accepts that these were allegations that it had contravened the Equality Act 2010. The only issue is whether the allegations were in bad faith. Assuming, as we conclude it is reasonable to do given her follow up letter to Mr Gladstone of 9 May 2023, that the negative experiences that the Claimant had in mind included the WhatsApp message of 11 April 2023 (Detriment 17), then that aspect was not false. In any event, we do not consider that the repetition of the matters discussed with Ms Pullen on 24 March 2023 in good faith can be

said to have been in bad faith simply because they were expressed following a meeting at which Mr Gladstone informed her that he was considering whether to extend her probation. Coming on the back of a series of matters which she had already described to Ms Pullen as “inequitable/concerning”, it is hardly surprising that she raised these matters again. We think that many employees in her position would have done so.

Sixth Protected Act

On 9 May 2023, by C informing MG in a letter about the race issue

187. In coming to a judgement as to whether the letter of 9 May 2023 was a protected act, it is beside the point whether Mr Gladstone understood or ought reasonably to have understood the letter to include allegations that he had racially discriminated against the Claimant. For the reasons set out above in relation to the fourth protected act, we do not agree with the Respondent that the allegations were false and in bad faith.

Detriment 22

On 10 May 2023 at CLT, by CB’s very challenging conduct towards C to the extent that MG himself said that was “*actually a fair point*”. The comparator is Simon Lewis (white).

188. As with Detriment 19, the Claimant has failed to establish the necessary primary facts to support her complaint. She claims that Ms Booth’s conduct towards her on 10 May 2023 during a CLT meeting was “very challenging” but provides no further details in paragraphs 300 – 302 of her witness statement beyond a bare assertion that Ms Booth’s conduct was aggressive and hostile. Ms Atri states that Ms Booth was aggressive towards the Claimant in CLT meetings, but does not address the 10 May 2023 meeting. We shall come back to certain observation she made to Ms Seymour in due course.
189. On this specific issue, we prefer Mr Gladstone and Ms Midgley’s account of the meeting to the Claimant’s, namely that when Mr Gladstone acknowledged that the Claimant had made a fair point in relation to a commercial matter that was under discussion, he was effectively acknowledging the Claimant’s contribution rather than making any comment on any conduct or perceived conduct of Ms Booth, which in any event they do not accept or recall as challenging. For her part, Ms Booth recalls the meeting in terms that the Claimant had sought to embarrass her in the meeting because she (Ms Booth) was insufficiently briefed coming into the meeting.
190. We do not uphold the Claimant’s complaint.

Detriment 23

On 12 May 2023, by MG temporarily extending C's probationary period.

191. As we have noted already, the Claimant's probation period was due to end over the weekend of 13 / 14 May 2023. She and Mr Gladstone met for her final probation meeting on Wednesday 10 May 2023. The meeting lasted for two and a half hours finishing around 5.45pm. Having told her during the meeting that he would revert to her by the end of the week, Mr Gladstone emailed her on 12 May 2023 to say,

"As you can appreciate there are a lot of points to consider and reflect on as we discussed in your probationary meeting. The meeting was very long and detailed with a number of specific points.

You asked that I fully reflect on these points so under the circumstances I am not yet able to make a decision on your probation. I have not yet seen the detailed notes from Sarah which she kindly agreed to take. I will therefore be temporarily extending your probationary period to consider and reflect on your points more fully as requested.

We will be in touch by the end of next week setting out next steps."

(page 1493)

Detriment 24

On 16 May 2023, by MG's decision that C had not passed her probation.

192. On 16 May 2023 Mr Gladstone informed the Claimant she had not passed her probation. The decision has its roots both in the concerns that had led Mr Gladstone to inform the Claimant on 3 May 2023 that he was considering extending her probation, but also in how she had approached their discussion on 10 May 2023.
193. The Claimant was accompanied to the probation review meeting on 10 May 2023 by Ms Bishop, with Ms Spendelow acting as a notetaker. The notes of the meeting are at pages 1477 to 1489 of the Bundle; we have re-read them in coming to this judgment. Although the Claimant had, begrudgingly we find, provided a detailed note on her achievements to date in post and of her planned activities to Mr Gladstone late evening on 9 May 2023 ahead of their meeting the following day, the meeting notes evidence that she was defensive from the outset. When Mr Gladstone started the meeting by thanking her for the notes and said they were what he had envisaged, she again immediately questioned the process, taking their discussion away from the central issue at hand. It was not a positive start to the meeting. When Mr Gladstone steered the conversation back to the matters they were there to discuss, asking the Claimant for her sense

of progress in relation to her five key objectives, she said she did not have much more to say. Mr Gladstone changed tack slightly albeit along the same lines. He endeavoured to kick-start a discussion on specific matters within the Claimant's area of responsibility by asking the Claimant,

"Taking the theme of governance and the constitution review talk to me about your approach and your performance"

(page 1477)

The Claimant responded,

"It will just be me reading from the note I shared".

194. Mr Gladstone persevered and asked the Claimant,

"I want to understand from your perspective what has gone really well and what are the areas for development".

195. The Claimant responded with some high level bullet points but did not otherwise engage in any meaningful way with Mr Gladstone's clear invitation to her. She did not, for example, explain why the limited matters referred to were felt to have gone well, nor did she indicate her contribution to their success, whether through leadership, collaboration or creative and strategic thinking. When Mr Gladstone invited her to share her reflections, the Claimant responded,

"It's covered in the note under the list of issues. It would be helpful if you read that."

196. Mr Gladstone had already confirmed that he had received her note. We are bound to say that the Claimant comes across as increasingly difficult, even obstructive. Mr Gladstone continued to encourage her to engage with him, saying

"Bring it to life. What are you most proud of?"

The Claimant responded,

"To be honest I am thrown by this process and your approach. It would be helpful to understand why we are taking this approach. I have read the policy and you are doing something different."

(page 1478)

197. After a further exchange, during which the Claimant retreated further into the process rather than any discussion of the issues of substance they were there to discuss, Mr Gladstone endeavoured to get the meeting back on track. He said,

“I can give you my thoughts and observations on your performance, many of which are positive.”

It seems to us that Mr Gladstone was offering a constructive way forward if only the Claimant would engage with him. Instead, she continued to challenge the process. Whilst Mr Gladstone did not agree with a number of the points she was making about the process and his alleged failure to discuss her progress with her during her probation period, nevertheless we find that he continued to try to steer the meeting back towards an open and constructive discussion of the Claimant's performance and progress, focused on her reflections and assessment rather than simply telling her what he thought in the matter. The Claimant was unmovable. Mr Gladstone reverted to his earlier suggestion that he share his observations, but even then the Claimant's response was that they had a scheduled appraisal meeting in two weeks' time when this could be discussed. We find that she was blocking any meaningful discussion. It rather begs the question what the Claimant thought might be discussed at her probation review meeting, if not her achievements to date and how she was tracking against her objectives for the year ahead. We find that Mr Gladstone was effectively compelled to take a firmer approach and to direct the conversation. In our judgement the Claimant must accept some responsibility for this change in the meeting dynamic.

198. As the meeting progressed Mr Gladstone moved onto the subject of the commercial entities work. When he commented that there had been a helpful meeting the previous week with SERCO, the Claimant challenged him as to why he was including SERCO in any discussion of the commercial entities. This prompted a somewhat circular and ultimately fruitless debate as to whether SERCO was a commercial entity. Putting aside that Mr Gladstone was giving positive feedback in relation to SERCO, the Claimant's stance was at odds with CIPFA's identification of SERCO as,

“one of a plethora of arrangements for delivery”.

(page 345)

199. When Mr Gladstone raised the issue of the RedQuadrant review the Claimant said,

“If you read my note it is not my time with RedQuadrant yet. My leadership is not required at the moment.”

(page 1485)

Given her acknowledgement on 6 April 2023 that she needed to be “more under the bonnet” in the matter and that Mr Gladstone had in any event given her a firm steer during the 1-2-1 that she needed to lean in and

shape the structure and culture, we think it was a surprising and unhelpful comment for her to make.

200. When Mr Gladstone moved to the issue of judgement and style and said there was an issue with over delegation to Ms Omoregie, the following exchange ensued,

“RT – So there is a record of this conversation? I refute this.

MG – Can you please listen, I am trying to give you support.

RT – The honest position is that you are using this to make a flawed decision. Give me an example.

MG – Around SMH delegations when I said I didn’t feel Legal had oversight.

RT – What have I delegated?

MG – My observation is that you are delegating a lot.

RT – You aren’t substantiating this – Amanda (Head of Comms) is leading on RedQuadrant so what is the difference?

RT – Answer the question.

MG – We have discussed in your 1-1 where you spend your time.

RT - Interrupted.

MG – Can I finish?

RT - This came up after an issue was raised...”

201. When Mr Gladstone then sought to discuss the Respondent’s acquisition of Sand Martin House, a strategic £50 million property transaction and explained that he would always be looking to the Claimant for advice and guidance on such “big ticket” items, the Claimant responded, “these are cultural issues” (page 1486). Mr Gladstone tried to provide a further example in relation to her judgement and style, which she had criticised him for failing to substantiate, but the Claimant interrupted him once more, so that he had to ask her to listen to his feedback. She interrupted him again when he sought to give feedback on a loan extension issue. We note that at one point in this exchange the Claimant said, “I’m not trying to be rude” (page 1487). We find that reflects some recognition on her part that this was in fact how she was coming across.

202. The meeting concluded at 6pm after two and a half hours. Mr Gladstone informed the Claimant that he would reflect on her comments and review her notes and any relevant paperwork before giving his decision, which he

said would be forthcoming by the end of the week. We have already dealt with his decision to temporarily extend her probation period to allow him additional time to reflect and come to a decision.

203. The only obvious reflection on the Claimant's part that we can identify came right at the end of the meeting when the Claimant said,

"There are strains in the golden triangle. There is an issue with Cecilie for which mediation may be necessary. I am committed to working on solutions and hopefully you can appreciate my honesty."

(page 1489)

Even then, it is unclear that the Claimant was acknowledging any responsibility on her part for the strains referred to, though given Ms Booth's conduct on 9 March 2023 and the Claimant's views regarding Employee A's grievance, she may have felt that she was the innocent party in the matter. Ms Bishop's early recollection of the meeting on 10 May 2023 was that the Claimant "countered all the points" that Mr Gladstone put to her (page 2662). Her observation does not suggest any much reflection on the Claimant's part or a willingness to take on board critical feedback.

204. Mr Gladstone decided the Claimant did not meet the standards needed for a Director of Legal and Governance and that a further extended period of probation was unlikely to result in him making a different decision in terms of confirming the Claimant's appointment. The next step was for Mr Gladstone to hold a further meeting with the Claimant to consider what this might mean in terms of the Claimant's continued employment as Director of Legal and Governance.
205. On 18 May 2023 Mr Gladstone wrote to the Claimant inviting her to a further meeting on 25 May 2023. He summarised his concerns in the letter. These were consistent with what he said during the meeting on 10 May 2023 and they are well documented in the Bundle, including in the Claimant's 1-2-1s.

Seventh and Eight Protected Acts

By C's letter of 19 May 2023 in which she complained about racism at work

By C's grievance of 20 May 2023

206. In her letter of 19 May 2023 the Claimant reiterated that she had been discriminated against, though the focus of her letter was Mr Gladstone's alleged failure to adhere to the terms of her contract in terms of the management of her probation period. Her letter is unclear as to whether she was additionally alleging that this was also discrimination; the comments in the first paragraph on the second page of the letter are somewhat ambiguous and could be referring to other matters. Be that as

it may, the letter was reiterating that she believed she had been discriminated against.

207. On 20 May 2023, the Claimant submitted a 17-page statement in support of her formal grievance submitted by email to Ms Spendelow the same day. The statement reiterated and, in many respects elaborated upon what she had written in her letter to Mr Gladstone of 9 May 2023. For the first time, as far as we are aware, the Claimant complained about Mr Gladstone's comments on being introduced to Ms Omoregie in early February 2023. That further matter was of course true.
208. For the reasons set out above in relation to the fifth protected act, we do not agree with the Respondent that the allegations in the letter and grievance statement were in bad faith.

Detriment 25

By delaying the formal process of investigation into the grievance dated 20 May 2023. After 20 May 2023, by failing to conclude the grievance of that date before the ET1 date (14 July 2023).

209. The alleged discriminators are Ms Seymour and Mr Gladstone.
210. Between 20 May and 21 June 2023, there was a delay in sending the grievance to Ms Seymour to begin her investigation while the parties explored whether matters could be resolved by agreement. This was accepted by the Claimant during cross examination.
211. Between 21 June and 17 July 2023 there was a delay at the Claimant's request due to her holiday (see the emails at pages 1953 to 1956 of the Bundle, summarised by Mr Dennis' in his written submissions, including that Ms Seymour encouraged the Claimant to meet with her prior to her holiday so that she might progress the investigation more quickly, but that the Claimant had put off any meeting until she returned, by which time she had filed her Tribunal claim. We infer that in addition to her holiday the claim was her other focus over that period.

Detriment 26

On 30 May 2023, by MG challenging C about commercial entities to the extent he asked her to, and there was an action point. The comparator is Simon Lewis (white).

212. Although the detriment wording could be clearer, the complaint relates to Mr Gladstone's alleged conduct at a CLT meeting on 30 May 2023. The Claimant says he was continuing to find fault and that he set an unrealistic action point involving work outside her remit. The action point was as follows,

“Assurance required from the MO that PCC are following the best practice CIPFA guidance / model and that we have a central unit consisting of the right officers and framework in place to ensure we are complaint (noted that implementation of this is quite a tricky area).”

(page 2287)

213. We do not agree with the Claimant when she says that the action point was unrealistic. In our view Mr Gladstone was looking to the Claimant as the Respondent’s Director of Legal and Governance to provide some broad assurance, rather than cast iron guarantee, that best practice was being followed in relation to the commercial entities. The Claimant was familiar with the relevance guidance, Ms Booth having provided her with a copy of it on the second day of her employment (page 576). Mr Gladstone’s expectations in the matter were qualified insofar as it was specifically noted that it was a tricky area, i.e. he was acknowledging it as a work in progress. Moreover, when the action was closed on 20 June 2023, it was noted that the Claimant and Mr Gladstone would be discussing his expectations around assurance at a 1-2-1 that day. We were not taken to the notes of that 1-2-1 and have not been able to locate them for ourselves in the Bundle. Nevertheless, the notes against the action at page 2287 of the Bundle evidence ongoing dialogue on the issue rather than, as the Claimant alleges, that Mr Gladstone was bullying or micro managing her. It seems to us that Mr Gladstone was giving a clear steer on an issue for which the Claimant was the responsible CLT Lead and directing her back to the CIPFA guidance, in circumstances where the Improvement Panel was saying that the issue was not being gripped sufficiently. The complaint is not well founded.

Detriment 27

On 8 June 2023, by MG not inviting C to the LGA awards. The comparator is Rachel Edwards (white).

214. The complaint in fact relates to the Local Government Chronicle (LGC) Awards on 8 June 2023, for which the Respondent was shortlisted for an award in the category of most improved Council. The awards were in respect of the calendar year 2022. The Respondent submitted its entry in January 2023; the Claimant does not suggest any involvement in the submission.
215. The Claimant says that Mr Gladstone decided not to invite her to the awards. In fact it was Ms Rose who put together the guest list for the event, which Mr Gladstone simply approved. Ms Rose proposed the guest list at 12:41pm on 16 May 2023 with Mr Gladstone responding at 1:09pm, “perfect – pl share with Wayne to confirm” (page 1499). That does not suggest that Mr Gladstone gave any significant thought to the guest list, certainly not in the sense of consciously excluding the Claimant. Ms Rose

was not asked about the event at Tribunal, including why she had settled upon the individuals she had when suggesting a guest list to Mr Gladstone and Cllr Fitzgerald. Nor did Ms Banton ask her about her knowledge or otherwise of the Claimant's protected acts. We explored this latter aspect with Ms Rose; all she could recall was possibly becoming aware in early summer 2023 of a grievance with Birmingham City Council, but no other details. We find that she did not know or have reason to believe that the Claimant had done one or more protected acts.

216. Although Mr Gladstone had asked Ms Rose to share the proposed guest list with Cllr Fitzgerald, he too was not asked about the matter at Tribunal.

Detriment 28

On 14 June 2023, by MG recommending that C's contract be terminated.

217. As we shall come back to in our conclusions below, Mr Gladstone's recommendation that the Claimant's contract should be terminated logically followed on from his decision that a further extended period of probation was unlikely to make a difference. However, even if the recommended termination of her employment was essentially a given, fairness required that the Claimant be told that her conduct on 10 May 2023 was now a further factor in Mr Gladstone's thinking and given a further opportunity to comment.
218. Mr Gladstone's letter to the Claimant of 18 May 2023 began with confirmation that the Claimant had not passed her probation period and that the next meeting on 25 May 2023 would be to consider the potential termination of her employment. The first documented concern in the letter was the Claimant's conduct on 10 May 2023. Having then recapped in terms of his other previously communicated concerns, he informed the Claimant that there were still two potential outcomes, namely the implementation of a Performance Improvement Plan and extension of the probation period as an alternative to the termination of her employment.
219. The meeting planned for 25 May 2023 was postponed at the Claimant's request and rescheduled for 1 June 2023. She then wrote to request that the meeting should be, "revoked" on the basis she said that her performance had not been formally reviewed during her probation period on a monthly basis, in contravention of the provisions of her contract. In her letter she complained that the notes of the meeting on 10 May 2023,

"...present me in a very negative light and are simply an inaccurate reflection of the meeting."

(page 1564)

220. She had been asked to submit any changes to the notes by 24 May 2023. In her grievance of 20 May 2023, the Claimant asserted that the notes amounted to victimisation and direct discrimination, a complaint she has

not pursued within these proceedings. She reiterated on 31 May 2023 that the notes were inaccurate but otherwise we cannot see that she has ever set out the respects in which they are said to be inaccurate. She had been accompanied on 10 May 2023 by Ms Bishop who, assuming she did not take detailed notes, would at least have been able to work with the Claimant to correct any alleged inaccuracies or misleading impressions. In the circumstances, we are satisfied that the notes are a fair and accurate record of the meeting on 10 May 2023 and, as such that the reason they present the Claimant in a negative light is because her conduct on that occasion, as Mr Gladstone alleges, was poor.

221. The meeting scheduled for 1 June 2023 was further postponed to 13 June 2023, it seems as the parties were then engaged in discussions through acas. Ms Spendelow's notes of the 13 June 2023 meeting are at pages 1757 to 1771 of the Bundle. The meeting commenced at 3pm. The notes do not record what time it finished, though they extend to 15 pages, a similar length to the 10 May 2023 meeting which lasted for two and a half hours. The notes evidence that at the Claimant's request Mr Gladstone elaborated on two specific areas of concern, namely the alleged lack of leadership around the RedQuadrant review and alleged lack of consistency in contributions in key meetings. Otherwise, the Claimant read from a pre-prepared document which she later provided to Ms Spendelow so that it could be incorporated within the meeting notes. The document accounts for over 10 pages of the meeting notes.
222. Mr Gladstone addresses the meeting on 13 June 2023 at some length in paragraphs 117 to 132 of his witness statement. Ms Spendelow also deals with in her witness statement. By contrast, the Claimant has very little to say about the meeting, focusing instead on the following procedural matters:
 - 222.1. The Respondent's alleged failure to establish a member led Grievance Committee to hear her grievance;
 - 222.2. Its decision to proceed with the meeting on 13 June 2023 notwithstanding she had by then raised a formal grievance; and
 - 222.3. The Respondent's alleged failure to appoint the Independent Panel correctly (see Detriment 39 below).
223. We therefore have very limited material to go on in terms of why the Claimant says that Mr Gladstone's recommendation that her contract be terminated was an act of discrimination (whether direct, harassment or victimisation). The case that was put to Mr Gladstone in cross examination was simply that the recommendation to terminate the Claimant's employment gave effect to his plan from the outset of the Claimant's employment to monitor the Claimant and line her up for dismissal. As we have already said, there was no such plan.

224. Mr Gladstone issued his decision on 14 June 2023, (pages 1775 – 1776). In his letter he reiterated the points made in his earlier letter of 18 May 2023 and engaged with certain points raised in the meeting itself, before concluding,

“In conclusion, I fundamentally disagree with the points you raised during the meeting, your behaviours and leadership style are poor and you are failing to undertake the role to the expected standard. The tri-part relationship / golden triangle, which is critical to the functioning of the Council, is ineffective and I have lost trust and confidence in you.

With the constitution, I am therefore recommending that your contract is terminated and this matter is referred immediately to an Independent Panel followed by Full Council. In light of this decision, it will also be necessary for me to brief the Cabinet and Group Leaders on this next week.”

(page 1776)

Ninth Protected Act

By C’s representations at the meeting of 13 June 2023

225. For the reasons set out above in relation to the fifth protected act, we do not agree with the Respondent that the allegations during the meeting, which were the continued repetition of her concerns that she had been discriminated against, were in bad faith.

Detriment 29

On 14 June 2023, by R not giving C the right of appeal against MG’s decision recommending that her contract be terminated.

226. It is not in dispute that the Claimant was not afforded a right of appeal in respect of Mr Gladstone’s decision to recommend that her contract should be terminated. That decision was effectively taken jointly by Mr Gladstone, Ms Spendelow and Ms Pullen. We come back to the reasons why they came to that decision in our conclusions below.

Detriments 30 and 31

On 16 June 2023, by MG prohibiting C from sending a letter to DF to protect C.

After 16 June 2023, by MG insisting that C continue to work on the DF matter.

227. In June 2023 the Claimant was on the receiving end of an abusive and threatening text message from a member of the public, DF. She accuses Mr Gladstone of prohibiting her from doing her job and endangering her

health and safety, and that his actions in the matter reflected his animus towards her.

228. DF evidently has mental health issues. In April 2023, DF emailed the Support Officer at Cambridge Police and Crime Panel to register a complaint against the Police and Crime Commissioner. The Claimant was the Panel's Monitoring Officer. An issue arose as to whether the complaint should be accepted if it did not allege misconduct by the Commissioner. The Claimant met with DF in early May 2023. In the following weeks DF's correspondence escalated. Mr Leigh believes that DF was seeking ways to pressure the Panel and its Officers into referring his complaint to the Independent Office for Police Conduct ("IOPC"). In June 2023, DF apologised for what he referred to as his "extremely erratic behaviour". A letter was issued in the Claimant's name the same day reiterating a request for more information which overlooked that DF had in fact written on 24 May 2023 with additional details in order for his complaint to be reconsidered. When this came to Mr Leigh's attention he wrote to Ms Omoregie to express both his surprise and frustration that the letter had been sent without his input and that it had failed to acknowledge DF's email of 24 May 2023. He wrote,

"I fully appreciate how pressured Rachelle is, but I am concerned that we are losing control of the situation. If this is not resolved quickly now, it is inevitable there will be media attention and a confrontation at the next Panel meeting, which will reflect badly on all parties concerned."

(page 1741)

DF had posted about the matter on Twitter and his tweets had been picked up by the BBC.

229. The Claimant responded constructively to Mr Leigh and indeed expressed that she too was concerned that DF's email of 24 May 2023 had been overlooked in the letter that had been sent out in her name. She separately emailed Ms Omoregie and Ms Hickmott. Her email lent the impression that she was inclined to blame them; it began:

"Was something missed here?"

(page 1740)

230. The Claimant was evidently under pressures of work at the time as she emailed Mr Leigh again about the matter on Saturday 10 June 2023 when she confirmed that it would be picked up by an external solicitor. Mr Leigh followed the matter up on 16 June 2023 as DF was by then threatening to camp outside his house if he did not receive a response by 5pm that day, a threat which Mr Leigh seems to have taken in his stride.

231. The external legal advice was for DF's complaint to be recorded and referred to the IOPC notwithstanding strong views to the contrary at the Office of the Police and Crime Commissioner ("OPCC"). The Claimant relayed the advice to Mr Leigh at 1:36pm on 16 June 2023 and provided a draft letter to DF for approval at 3:06pm, though emailed Mr Leigh again at 3:30pm to say that Mr Gladstone had advised that a response was not to go out that day but instead the following Monday once he had been fully briefed.
232. Mr Gladstone only became aware of the DF matter at a relatively late stage when Ms Midgley raised concerns that the Claimant was redirecting correspondence from DF to her. This led Mr Gladstone to speak to the Chief Executive of the OPCC on the morning of 16 June 2023, who voiced certain concerns to Mr Gladstone. Mr Gladstone also learned that day that DF had sent a highly threatening email to a member of the Governance Team who in turn was voicing a lack of support from the Claimant. When Mr Gladstone spoke with Mr Leigh, Mr Leigh also expressed concerns as to how the situation had been handled, including its delegation by the Claimant to Ms Omoregie (corroborating Mr Gladstone's observations the previous month that the Claimant was over delegating to her). The Chief Executive of the OPCC remained uncomfortable about the advice to refer DF's complaint and in particular highlighted the potential for media interest over the weekend. In the meantime the Claimant's EA Rachel Hickmott emailed Ms Midgley as she felt that the Claimant was criticising both her and Ms Omoregie's handling of the matter. We are inclined to agree. She referred to the email from the Claimant already referred to as,

"out of order in my eyes and unfair on both myself and Adesuwa".

(page 1739)

233. Mr Gladstone emailed the Claimant to say that he felt he had not been briefed in the matter, noting the potential reputational issues for the Chief Constable, the Police Commissioner and Peterborough. His email concluded,

"I do not want any correspondence to go yet until I have been fully briefed next week".

234. A few minutes later Mr Gladstone was provided by Ms Rose with the details of an inquiry about the matter from the BBC. He reiterated to the Claimant that the matter was to be discussed the following week and that nothing should go out at that time. The Claimant emailed Mr Gladstone again at 4:49pm stating that DF was expecting a response which she said Mr Gladstone was blocking and that this was,

"... creating a weather for escalation and will make me vulnerable given [DF] knows what I look like and may search for me under name, full name. I have no discretion in law allowing me not to record this

complaint. In not carrying out my lawful responsibilities in relation to this matter, my professional integrity could be called into question. I therefore respectfully ask that you allow me to do my job and respond in the terms that has been sent, after all the delegation sits with me and I must carry out my duties under that delegation.

I also remind you of your duties towards me, as my employer, in relation to my health and safety."

(page 1823)

235. The Claimant sent a short email to DF a few minutes later assuring him of her response by the following Monday. He responded immediately telling her,

"Don't bother.

I'll be dead or in jail on Monday.

I am finished."

236. A risk assessment was undertaken on 20 June 2023, though Mr Gladstone took immediate steps on 16 June 2023 to get hold of Emergency Planning to support a Security Risk Assessment, something he followed up again on the Monday. He also discussed the situation with Ms Pullen and the Chief Executive of the OPCC, and took action on the Monday to ensure additional safety measures were in place. Over the weekend the Claimant reported the matter to the Police and she attended Cabinet virtually on the Monday given her security concerns in the matter. In emails with Mr Gladstone she said that he had not checked in on her welfare and said he had put her health and safety at risk. He endeavoured to defend himself against the accusation, highlighting that he had only become involved on the previous Friday. This prompted the Claimant to accuse him of ignoring her concerns, something he refuted. He stated that Ms Pullen had been in regular contact with the Claimant at his request.
237. The Claimant additionally complains that Mr Gladstone insisted she continue to work on the matter notwithstanding advice from Peterborough's Health and Safety Officer and Bedfordshire Police. However, the advice of the Health and Safety Officer was for the Claimant to step away from the case if it was practical to do so (page 3217). The Claimant wanted to withdraw entirely from the case. However, the legal and practical reality was that she could not do so. She was the Monitoring Officer to the Panel and, as she said herself, only she had the requisite authority to advise as to how DF's complaint should be dealt with. A workaround solution was eventually identified, namely that she would delegate her authority in the matter to Mr Gladstone.

238. The Claimant sent a firmly worded email to Mr Gladstone and Ms Pullen on 21 June 2023 setting out her views. She made a number of pertinent points, but they are points that might have formed the basis of a more detailed briefing to Mr Gladstone had time permitted on 16 June 2023, including as to the relevance or otherwise of any reputational issues or preferred communications strategy to any decision on DF's complaint. Her email initially led Mr Gladstone to reiterate that it was ultimately a decision for the Claimant and that her decision in the matter would be respected. As we say, ultimately the situation was addressed by Mr Gladstone notionally taking the decision (albeit effectively adopting the Claimant's decision) under delegated authority and issuing the Claimant's letter to DF albeit in his own name and which noted his delegated authority in the matter.

Tenth Protected Act

C's first ET claim against R (Case No. 3308103/23) presented on 14 July 2023

239. For the reasons we shall come to, two of the complaints in the first claim are well founded, in which case we are not strictly required to consider the Claimant's good faith or otherwise in the matter. Nevertheless, we do not consider that her other complaints were made in bad faith. We have not upheld the great majority of the Claimant's complaints and, as regards the two harassment complaints that we have upheld, we shall explain in due course why we conclude that it was not Mr Gladstone or Ms Booth's intention or purpose to violate the Claimant's dignity or create an adverse environment for her. Notwithstanding, as we say, there is some weight to Mr Dennis' submission that the Claimant has misinterpreted or misremembered certain events, and some evidence that the Claimant has revised her view of certain events so that they are more consistent with how she has come to see things, this does not equate to dishonesty or a reckless disregard for the truth. We do not expect even a solicitor to be an entirely objective bystander in their own case. There is no basis for us to impugn the Claimant's professional integrity in bringing the claim. Over the 20 days that we have considered this case, there has not been any point when we have doubted the Claimant's (or any other witness') honesty. During the hearing, she and they endeavoured to provide their honest recollection of events. In the case of the Claimant we are satisfied that she genuinely came to believe that she had been discriminated against and with each iteration or reiteration of her concerns, she was setting out her evolving (sometimes reinforcing) perception of how she believed she had been treated by the Respondent.

Detriment 32

On 17 July 2023, by MG making the following false and prejudicial submissions to the Independent Panel about C:

- 32.1 That he had offered C a fresh start;
- 32.2 That he was not aware of the specific probation review meeting form;
- 32.3 That he raised concerns with C about her style;
- 32.4 That he referenced a grievance brought against C which led to no disciplinary action against her;
- 32.5 By failing to mention his own hostile conduct towards her in their meeting on 3 May 2023; and
- 32.6 By failing to acknowledge the protected act on 3 May 2023 and that he was the subject of the protected act of 9 May 2023.
240. The complaint is in respect of Mr Gladstone's report to the Independent Panel dated 17 July 2023 (pages 2129 to 2138). Detriments 32.1 and 32.3 are not well founded. We have already found that Mr Gladstone reassured the Claimant on 20 October 2022 and again on her first day that Peterborough would be a fresh or clean start for her. Similarly, we have noted that Mr Gladstone gave feedback to the Claimant regarding her style, including his perception that she over delegated. His statement that he was not aware of the specific probation review meeting form was also true, in so far as the form was only first provided to him on 17 March 2023. If the Claimant suggests that he should have made this clearer in his report, we are satisfied there was no intention on his part to mislead the Panel. The point he was seeking to make was that after the Claimant had joined the Respondent he had not adhered to the Respondent's documented procedure because for several months he was unaware of it. Instead, he had emulated the approach that had been used during his own probation period, namely regular 1-2-1s with the Claimant, the notes of which he shared with the Claimant.
241. As regards Detriment 32.4, Mr Gladstone in fact referred in his report to Employee A's grievance rather than Employee C's. He wrote:
- "A grievance was raised in March within the legal service team, which impacted RT and others. It was decided that the grievance would be considered by the s151 officer. The grievance was a broad complaint about:
- Circumstances leading up an individual's resignation
 - Manners in which the matter has been handled and
 - Council's failure to deal with the concerns properly or at all.

During the grievance investigation, it became evident that constructive feedback would be required around a number of elements, some of which impacted RT.

Following the outcome, feedback was then provided to those involved. RT was unwilling to accept feedback in a constructive way, the grievance was partially upheld against RT and my perception of her demeanour within the organisation and with the s151 changed following this outcome.”

(page 2134)

242. It seems to us that the relevant point he was making was that the Claimant was unwilling to receive feedback in a constructive way and that working relationships within the Golden Triangle were impacted as a result.
243. Turning to Detriment 32.5, Mr Gladstone’s conduct towards the Claimant on 3 May 2023 was not hostile even if we think he might have avoided referring to her as “aggressive”. Mr Gladstone provided the Panel with a copy of the Claimant’s letter of 9 May 2023 as Appendix 9 to his report. The Claimant had set out her concerns in some detail in the letter. She did not say in the letter that his conduct towards her on 3 May 2023 had been hostile, including because he had described her conduct during the meeting as “aggressive”. In which case, and on the reasonable assumption that his apology had drawn a line under the matter, there was no obvious reason why he should have highlighted the matter.
244. Finally, as regards Detriment 32.6, the Claimant did not do a protected act on 3 May 2023 (see paragraphs 182 to 184 above), in which case Mr Gladstone’s failure to reference something she did not do was neither false nor prejudicial. The second part of her complaint is not well founded; as we have just noted, Mr Gladstone provided the Panel with a copy of the Claimant’s letter of 9 May 2023 as Appendix 9 to his report. In which case, the Panel members were able to read it for themselves.

Detriment 33

On and after 19 July 2023 and after the OH Report, by MG asking C to lead on commercial entities work. The comparator is Simon Lewis.

245. Although Mr Gladstone is identified within the List of Issues as the discriminator, at paragraph 420 of her witness statement the Claimant says:

“Despite this report, Ms Pullen didn’t intervene although she was fully aware of the health circumstances and she sat back while Mr Gladstone still instructed me to lead on the commercial entities work knowing that overworking me with work outside my Job Description

would damage my health further. This in order to punish me further and to continue the hostile environment.”

In other words, she is implicitly critical of Ms Pullen.

246. On this issue, there is little we can usefully add to our findings in relation to Detriments 16 and 26. As Mr Dennis notes, this allegation arises from Ms Midgley’s email to the Claimant and others of 1 August 2023 (page 1619) in which she stated that Mr Gladstone had confirmed that the Claimant was the CLT Lead for the ongoing work to improve Peterborough’s governance arrangements for its commercial entities. As we shall come back to when we consider Detriment 42, Mr Gladstone was unaware of the recommendations in the occupational health report at this time.

Eleventh Protect Act

On 2 August 2023, by C’s complaint about the commercial entities work outside C’s job description

247. On 2 August 2023, the Claimant emailed Ms Pullen, copying in Ms Bishop:

“Please see below. It is with regret that my health and the OH report is being ignored.

I wish to raise this as a formal grievance, namely that the CEO is ignoring an OH report and proceeding to allocate me work outside the scope of my job description, in further detriment to my health. Therefore the duty to protect my health and safety is being ignored by Peterborough City Council.

Please can you escalate this grievance as a matter of urgency.

Sharon is there anything the unisons can do in this regard, which is a very serious matter.”

(page 1619)

The “below” was a reference to the email from Ms Midgley of 1 August 2023 referred to under Detriment 33 above.

248. There is no explanation from the Claimant or Ms Banton why this amounted to a protected act. We agree with Mr Dennis that the email does not contain any allegation that anyone had contravened the Equality Act 2010, nor was it something done for the purposes of or in connection with the Act. Instead it focused on issues of health and safety. Ms Pullen was not asked at Tribunal whether she believed the email was a protected act. There are no grounds for us to infer that was her understanding in the matter. We do not therefore uphold that the Claimant’s email of 2 August 2023 was a protected act.

Detriment 34

On 8 August 2023, by MG suspending C.

249. Just after 6pm on 8 August 2023, the Claimant was suspended with immediate effect pending an investigation into an allegation of serious misconduct. She had shared RedQuadrant's report regarding the future of the Respondent's Legal Services with Mr Turner. Although the Claimant refers to Mr Turner as her mentor, it is unclear whether and, if so, when it became a formal mentoring arrangement, as the Claimant seemingly first reached out to Mr Turner after her meeting with Mr Gladstone on 3 May 2023 (see in this regard paragraph 4 of Mr Turner's witness statement). They had a shared connection through their appointments to the board of Lawyers in Local Government. As Mr Turner describes it, the Claimant confided in him during what was understandably a difficult time for her. Ms Banton did not ask Mr Gladstone about his knowledge or approval of the arrangement.
250. It is not in dispute that the RedQuadrant report was shared with Mr Turner. The Claimant maintains that at the point she provided a copy to him it was no longer in draft form as it had been signed off by RedQuadrant. It seems to us essentially beside the point whether it was in draft or final form; Mr Gladstone's concern was that the Claimant did not have the Respondent's or RedQuadrant's agreement to share the report with Mr Turner. In his letter to the Claimant confirming her suspension, Mr Gladstone said there were questions as to whether disclosure was in the best interests of the City Council (pages 3104 and 3105). The Claimant's witness statement focuses on the status of the report rather than fully engaging with the question of whether there was any restriction on disclosing the report to others, in particular outside the organisation, and whether its disclosure to Mr Turner served the Respondent's interests. Whilst she makes the point that having a mentor "was to enable me to do my job well and in the best interests of the Council", it does not follow, as the Claimant implies, that if the report was no longer in draft form, it was no longer a confidential document (paragraph 426 of her witness statement).
251. As to whether the Claimant was, or at least whether Mr Gladstone believed she was, under a standing instruction not to disclose the RedQuadrant report without the Respondent's prior agreement, we accept Mr Gladstone's evidence that he understood the Claimant to have been told that she was not permitted to share the report with any third party before it had been approved by CLT. His understanding in that regard stemmed from an exchange of emails in late June/early July 2023 when Ms Booth and Ms Pullen had flagged concerns about the report being shared externally following a request from the Claimant to do so.
252. The Claimant provided a copy of the RedQuadrant report to Mr Turner at some point in July 2023. She asked him to set out his views in an email, which he did on 27 July 2023. The Claimant forwarded the email to Ms

Midgley on 3 August 2023. In other words, the Claimant was open as to what she had done and did not seek to conceal this from Mr Gladstone or CLT. Ms Midgley and Mr Gladstone were both on leave on 4 August 2023. Ms Midgley made Mr Gladstone aware of the email on Monday 7 August 2023. He does not say when on 7 August this was, and neither he nor Ms Midgley were asked about the timing by Ms Banton. Mr Gladstone does not recall seeing the email at the time. Whilst he does not say that he spoke to Ms Booth about the matter before he received an email from her at 3.14pm, forwarding an email from Laura Griffiths at RedQuadrant, it may be inferred that they had discussed the matter as the email was forwarded by Ms Booth without comment, something she is only likely to have done if Mr Gladstone was already familiar with the matter (see in this regard page 2006 of the Bundle). Included within the email chain was an email from Ms Griffiths to the Claimant on 30 June 2023, seemingly in response to a request by the Claimant to share the report with an unidentified third party. Ms Griffiths had written:

“Once formalised and shared with CLT, this report could be shared under private and confidential.”

253. A few moments later, Ms Booth forwarded a further email chain to Mr Gladstone, in which the Claimant had asked Ms Griffiths on 14 July 2023 whether the report could be shared “per my earlier request” with the “external investigator” (this was a reference to Winston Brown, an external solicitor who had been appointed to investigate Employee C’s grievance and whistleblowing complaint). Mr Morris-Jones had been brought into copy. He responded to the Claimant on 17 July 2023:

“In agreement that you can share with WB should you feel it important to do so.”

(page 2116)

However, Ms Griffiths responded to both of them a short while later:

“I’m assuming from your email Ed that permission for sharing has been given by PCC?”

When Ms Booth forwarded this exchange on to Mr Gladstone on 7 August 2023 her only comment was a series of exclamation marks.

254. We infer that Ms Booth disclosed to Ms Griffiths at some point on 7 August 2023 that the RedQuadrant report had been shared with Mr Turner and that his comments/feedback had been tabled for discussion at CLT, alongside the report. This prompted a strongly worded email the following morning from Benjamin Taylor, RedQuadrant’s Managing Partner, who wrote in an email to Ms Booth:

“It should be noted that we have already taken the time to review in detail and respond to numerous comments on our work, beyond the

time budgeted and paid for our work on this project. To not be extended the courtesy of the opportunity to review this new report before its consideration alongside ours is clearly unfair, and might lead CLT to an erroneous understanding of the situation.

Most importantly, we understand that in order to produce this report, our work, commissioned by the council's Section 151 officer, has been shared externally without consultation with us or notification, despite our request that the report not be shared in this way until it has been signed off by CLT. At the moment, it is our view that it is our property and our work product, and has not passed into the council's ownership. I therefore feel forced to take legal advice on this matter."

(page 4467)

255. Regardless of how the matter was reported back to Ms Griffiths by Ms Booth, and then relayed to Mr Taylor, we are in little doubt as to the strength of feeling this had provoked at RedQuadrant who were evidently already frustrated with the Claimant. She, in turn, had little confidence in them. We conclude that the Claimant felt vindicated by Mr Turner's comments/feedback which she was keen to share with CLT, in order to support her own criticisms of RedQuadrant and, by inference, Ms Booth's continued faith in them.
256. Even before Mr Taylor's email to Ms Booth, Mr Gladstone had already decided in light of Mr Turner's comments/feedback that a scheduled CLT discussion of the RedQuadrant review should not go ahead later that day. Mr Taylor's email would only have served to reinforce that decision.
257. At 4.42pm on 8 August 2023, the Claimant emailed Dan Kalley in the Respondent's Democratic and Constitutional Services, copying in Mr Gladstone, Ms Booth and what appears to have been the party leaders on the Council. She noted in her email that the review had been pulled as an agenda item for discussion at CLT. She attached a copy of the RedQuadrant report to her email together with Mr Turner's feedback and feedback that had also been received from Ms Omoregie. Whilst she may not have been aware of Mr Taylor's email, there is no evidence that she spoke to Mr Gladstone to let him know that she would be copying the report and commentary to senior councillors. Her stated rationale for sharing them was as follows:

"... given the cost of the report and future budget for legal services, it is imperative that members (need to know right of councillors) are sighted on this one given the financial implications and the realistic needs of legal services. We must be transparent with members on issues and ensure that the future of legal services reflects service needs.

(page 3081)

We find that the Claimant was more concerned with her own interests in the matter, and that she was eager for Cllr Fitzgerald and others to be apprised of her views and concerns.

258. Mr Gladstone decided that the Claimant should be suspended pending a disciplinary investigation. In his witness statement he says that the Claimant effectively relied upon Mr Turner to critique the RedQuadrant report even though it was a review she was leading on and should have taken ownership of. At Tribunal he said that she had effectively deployed Mr Turner's critique to undermine the review she had herself been leading. We are inclined to agree.
259. Ms Pullen confirmed at Tribunal that the Respondent had taken legal advice before the Claimant was suspended. That is unsurprising in the particular circumstances. Ms Pullen said that she was all too aware that it would look to the Claimant that the Respondent was "building", that is to say building a case against the Claimant.

Detriment 35

On 14 August 2023, thirty minutes before the Independent Panel meeting, by Ms Pullen negatively briefing the whole panel (including the Chair) against C.

260. It is not in dispute that the Independent Panel received an initial briefing from Ms Pullen on 14 August 2023. She explained at the outset of the briefing to the Panel that she was not there to provide HR advice as Ms Thompson was on hand to support the Panel in that regard, with external solicitors also available if required to provide legal support on any constitutional issues. In our view it is understandable that the Panel was given an initial briefing, and that it came from the senior most HR professional within the City Council, given that it concerned one of the Golden Triangle and that the Claimant was asserting that the process was unlawful. The Panel was apprised of advice that had been received from Leading Counsel in the matter and assured that the Panel meeting was procedurally and constitutionally correct.
261. The Claimant does not specifically identify in her witness statement why she says it was a negative briefing. She highlights that Ms Pullen personally delivered the Panel papers to Mr Osbourn ahead of the meeting. The clear inference, taken up by Ms Banton in her cross examination of both Ms Pullen and Mr Osbourn, is that Ms Pullen had sought to influence the process and that she and Mr Osbourn must have discussed the case when she went to his home, something they each flatly deny. At paragraph 442 of her witness statement the Claimant says,

"The Panel was unduly influenced by or complicit with Ms Pullen and Mr Gladstone who were seeking to victimise me, and to that end the biased Panel rubber stamped their preferred outcome."

262. We do not accept the Claimant's attempts to impugn Ms Pullen's, Mr Osbourn's or the other Panel members' integrity in the matter. We shall come back to the Panel's decision in a moment. However, we accept that Ms Pullen delivered the Panel papers to Mr Osbourn because this was essentially on her way home and accordingly the most convenient way of ensuring they reached him on time and so that confidentiality was maintained. We accept that they had not previously met, she did not enter his house and there was no conversation about the case on the doorstep. In delivering the papers to Mr Osbourn, Ms Pullen was not victimising the Claimant as she claims in her witness statement.
263. As to why the briefing is said to have been a negative briefing, in the absence of the matter having been addressed in Ms Banton's closing submissions, we infer from her cross examination of Ms Pullen that the complaint otherwise relates to point 12 in the briefing note:

"For context on Wednesday – RT was suspended for an allegation of Gross Misconduct. Subject to external investigation – yet to be set up." (page 3225)

Ms Banton suggested to Ms Pullen that this amounted to "putting the boot in", something Ms Pullen denied. She said the fact the Claimant was merely under investigation for misconduct did not mean that this information should be excluded from the briefing. She said she had acted with caution and taken legal advice. The briefing did not extend beyond the few words set out above. We return to the matter in our conclusions below.

Detriment 36

On 14 August 2023, by the Independent Panel accepted MG's recommendation that C be dismissed.

264. The detriment is framed in terms that the Independent Panel 'accepted' Mr Gladstone's recommendation that the Claimant should be dismissed. We invited Ms Pullen to describe the process as she understood it. She said the Panel had reviewed Mr Gladstone's recommendation and made a decision to support it.
265. The Panel's final conclusion was documented as follows:

"The panel concludes that the recommendation by Matt Gladstone (MG), Head of Paid Service, to terminate employment of Rochelle Tapping (RT) in the post of Director of Law and Governance (Monitoring Officer) (MO) is reasonable and valid."

(page 3390)

266. The meeting on 14 August 2023 commenced at 11am and concluded at or around 4.45pm. The Claimant and Mr Pullen each made written

submissions to the Panel, which were included within the Panel's papers, and also attended before the Panel to make oral submissions and answer questions from the Panel. The meeting minutes extend to some 28 pages.

267. Ms Thompson confirms that she held two briefing sessions with the Panel ahead of the meeting, which were focused on how to get the best out of the day. The Panel was clear with Ms Thompson that it did not want her to be present during its deliberations. There is no evidence to suggest the Panel simply rowed in behind Mr Gladstone, or as the Claimant asserts that it rubber stamped Mr Gladstone's preferred outcome. Given her interactions with the Panel during the briefing sessions and on 14 August 2023, Ms Thompson said she would have been extremely surprised had they rubber stamped Mr Gladstone's preferred outcome. The fact that they excluded her from their deliberations supports that they acted independently of Mr Gladstone and anyone else in the matter, as does their report, which is critical of Mr Gladstone. They wrote:

"The panel considered the one to one mechanism used by MG as useful but somewhat lacking in formality and strategic objectives. The guidance was helpful but an incomplete substitute for the formal probation procedures."

"In addition, the panel feels that PCC could have helped by providing additional guidance and mentoring for RT at an earlier stage."

(page 3390)

268. Mr Osbourn emailed Ms Thompson on 15 August with a list of questions. The Panel met again on 17 August and 22 August 2023, having been provided with the minutes of the 14 August 2023 meeting. That further evidences to us that the Panel engaged fully and diligently with the issues it was required to consider. In our judgement, the Claimant's assertion that the Panel's decision simply rubber stamped Ms Pullen and Mr Gladstone's preferred outcome is without foundation.

Twelfth Protect Act

On 14 August 2023, C referred the Independent Panel to her race grievance of 20 May 2023

269. Mr Dennis notes that the minutes record that the Claimant made some reference on 14 August 2023 to her grievance but says the Respondent requires the Claimant to prove that she made an allegation (whether or not express) that a person had contravened the Equality Act 2010, or that she did any other thing for the purposes of or in connection with the Act. In our judgement, the answer is to be found in paragraph 1.13 of the Panel's report in which it said:

“The Panel noted that within the submissions presented by RT there were numerous references to harassment, victimisation and racial discrimination.”

(page 3390)

270. In our judgement, the Claimant did a protected act. For the same reasons that her eleventh protected act was not false or in bad faith, we conclude that this was also the case with the twelfth act relied upon.

Detriment 37

On or before 31 August 2023, MG instructed all Councillors: (i) to ask no questions about his recommendation to dismiss C; and (ii) to vote in favour of the dismissal at the Extraordinary Full Council Meeting that day.

271. At paragraph 461 of her witness statement the Claimant says,

“What I was not aware of was that Mr Gladstone had instructed the leaders of the main political parties to vote to dismiss me and sought to whip their members into that decision. Councillor Nicolle Trust informed me of that instruction from her leader Councillor Wayne Fitzgerald, after the event when we [met] on 6 October 2024...”

272. Ms Trust has not made a witness statement in these proceedings nor did she give evidence at Tribunal. We are not aware that the Claimant sought a witness order to secure her attendance at Tribunal. There are no contemporaneous documents to support the allegation, for example text, WhatsApp or other messages between the Claimant and Ms Trust. The documents at pages 168 – 171 of the Supplementary Bundle, referred to by the Claimant, certainly do not support what she says. Cllr Fitzgerald said at Tribunal that Ms Trust is upset by the allegation and has told him it is untrue. The allegation is a serious one because, if correct, it would mean that Mr Gladstone was willing to interfere in the democratic process, that the leaders of the main political parties were biddable and that those councillors who fell in line presumably did so without regard to the interests of the constituents they purport to serve. Mr Gladstone and Mr Fitzgerald were dismissive of the allegation, with Cllr Fitzgerald referring to it as “ridiculous” and a “fanciful idea”. He could not recall at Tribunal whether there had been a group leaders meeting ahead of full Council on 31 August 2023, but was clear in his recollection that there was no Conservative group meeting, in which case it is unclear to us how any purported instruction might have been communicated or cascaded. If such an instruction had been given it begs the question why questions were in fact asked (as the meeting minutes evidence) and why the vote was not carried unanimously. Quite simply, there is no evidence whatever that Mr Gladstone gave an instruction of the type alleged by the Claimant. Her complaint in the matter is not well founded.

Detriment 38

On 31 August 2023, by the Respondent, by a vote in full Council: (i) wrongly deciding to dismiss C; (ii) rubber stamping the recommendation of MG to that end; and (iii) failing to consider the race grievance before reaching that decision.

273. As we have just noted, Cllr Fitzgerald is dismissive of any suggestion that Mr Gladstone sought to control the proceedings and interfere in the democratic process. On the Claimant's own evidence when she spoke with Cllr Fitzgerald on her first day at Peterborough, he had spoken of black members of his family and confirmed that her dispute with Birmingham City Council was not an issue for him. After she spoke to her trade union representative about the matter on 14 November 2022, he had written in an email the following day that,

"The Conservative Leader of Peterborough Council has no problem with Rachelle pursuing a race discrimination case against Birmingham."

(page 59 of the Claimant's Supplementary Bundle)

274. We accept that Cllr Fitzgerald's evidence that he had warmly welcomed the Claimant on her first day at Peterborough and said words to the effect that it was great to have her on board. He did not have Cabinet responsibility for staffing though he was part of the Employee Committee that recommended the Claimant's appointment, in which case her race was not an issue in his mind when he interviewed her, recommended her for appointment and took the recommendation to full Council for ratification. We also accept Cllr Fitzgerald's evidence that they had a good working relationship throughout her time at Peterborough. He expressed his views at Tribunal in the following way,

"Her colour has no bearing. I don't look at people in that way personally."

275. As to the councillors' knowledge or otherwise that the Claimant had done protected acts, Cllr Fitzgerald certainly understood from the Independent Panel report that the Claimant was complaining of harassment, victimisation and race discrimination and that her concerns in that regard were under investigation. The Claimant herself elaborated upon these matters on 31 August 2023 and made extensive reference to having been racially discriminated against in her written statement to full Council.
276. In our judgement, the weight of evidence does not support that full Council rubber stamped Mr Gladstone's recommendation. On the contrary, as with the Independent Panel before it, the evidence confirms that full Council gave the matter its anxious consideration. In advance of the meeting on 31 August 2023 councillors were provided with an extensive

pack of documents. The Claimant and Mr Gladstone's statements ran to 27 and 10 pages respectively, excluding appendices. They had each been allocated a further ten minutes to address full Council, though in the event the Claimant spoke for fifty minutes or so in total, with further time for questions. The meeting lasted 1 hour and 50 minutes. 43 councillors out of a total of 50 councillors present voted to dismiss the Claimant.

Detriment 39

On 31 August 2023, by the Respondent, by a vote in full Council, retrospectively ratifying the appointment of the Independent Panel.

277. Ahead of the vote to dismiss the Claimant, the Councillors voted to ratify the appointment of the Independent Panel members. The Claimant asserts that the Independent Panel was unlawfully constituted with the result that their recommendation should have been "ignored and a new process commenced" (paragraph 456 of her witness statement). As we have set out above in relation to Detriment 36, she also contends that the Independent Panel acted unlawfully in so far as it should have only proceeded on the recommendations of an Investigatory and Disciplinary Committee.
278. The Claimant asserts a number of times in her witness statement that the Independent Panel was unlawfully constituted, though does not explain why. However, the reasons emerged in the course of evidence, in particular from a 'section 5 report' submitted by the Claimant on 8 August 2023. Section 5 refers to s.5 of the Local Government and Housing Act 1989, Section 5(2) of the Act places a duty on local authority monitoring officers to prepare a report to the authority where it appears to them that any proposal, decision or omission by the authority, howsoever it may be acting, has given rise to or is likely to or would give rise to certain specified matters, including contraventions of the law and relevant codes of practice. The report submitted by the Claimant is at pages 3361 to 3364 of the Bundle.
279. The issues involved are otherwise more conveniently dealt with in our conclusions below.

Detriments 40 and 41

On 31 August 2023, by R / MG sending an all staff email informing them that C was dismissed for not passing her probation.

On or before 6 September 2023, by R / MG / Ms Amanda Rose negatively briefing the Cambridge News and Peterborough Telegraph against C, which resulted in the negative media coverage of C on 6 September 2023.

280. We deal with these matters together as they are interrelated. On 24 August 2023, an article appeared online at www.peterboroughtoday.co.uk under the tag, "top peterborough city council legal executive claims

disciplinary process brought against her was illegitimately constituted” (page 3400).

281. We accept Mr Gladstone and Ms Rose’s evidence that they did not brief any media organisation against the Claimant, and that the Respondent had nothing to gain from doing so. We agree with Mr Dennis that the website’s reference to a disciplinary process most likely derived from advice secured by the Claimant from Leading Counsel, which was included by her in a ‘section 5’ report (“s. 5 report”) which we shall come back to in a moment. Mr Straker QC had advised,

“The independent persons on any disciplinary hearing panel must have been appointed by the full council, if they were not then that hearing is illegitimately constituted”.

(page 3363)

282. As Mr Dennis does, we note Mr Straker’s reference to a “disciplinary hearing panel”. There was no disciplinary hearing panel, rather an Independent Panel whose legal remit was to consider Mr Gladstone’s recommendation that the Claimant should be dismissed for failing her probation period. Mr Straker’s specific reference to the panel was subsequently picked up or repeated by two other media organisations, CambsNews and the Peterborough Telegraph.
283. The further reference in the 24 August 2023 online article to the process being “illegitimately constituted” was also Mr Straker’s expression and likewise repeated or adopted by the Claimant in her s. 5 report.
284. Whereas Mr Gladstone’s report and recommendations in the matter were understood by the Respondent to be exempt from publication by virtue of the Local Government Act 1972, we find that the s. 5 report was not so understood, with the result that it was publicly available to journalists and others who were able to read its contents in full, including the quoted excerpts from Mr Straker’s advice. If, as the Claimant contends, the s. 5 report was exempt from publication, it seems to us that Mr Gladstone and Ms Rose had no reason to put the report into the public domain since all it served to highlight was that there was division amongst Peterborough’s top team, with its own Monitoring Officer alleging that it was acting unlawfully. They would have had every reason to prefer that the report remained private. The most likely explanation for the report’s publication lies in its timing. The Claimant emailed Mr Gladstone and Ms Booth on the morning of 8 August 2023 to say that she was consulting them on her intention to issue a s. 5 report, the draft of which she attached. When Mr Gladstone acknowledged her email and said that he was considering the content, she responded asking that he respond by close of play. He updated her again at 2.17pm to let her know that he was seeking legal advice which was expected back the following day. In the meantime he asked her not to send the report until he had had a proper opportunity to

“look at the advice in the round” (page 3091). The Claimant replied one minute later to say that the report had been submitted. She had not even afforded him the opportunity to come back to him by close of play as originally requested. She said, “... I advised as the Monitoring Officer and you should be referring to my advice”. In the particular circumstances, her response comes across as unhelpful, even disrespectful.

285. When she submitted the s. 5 report to Peterborough’s councillors, the Claimant did not say that the report was not for public consumption, nor was this identified within the body of the report itself, something she might have highlighted given that she was purporting to advise.
286. In the s. 5 report the Claimant identified herself as the Monitoring Officer and asserted as follows:

“The Independent Panel scheduled to sit on 14th August 2023 is ‘illegitimately constituted’. Further and in consequence, that Panel does not have jurisdiction to hear any matter. If the Panel were to sit on 14th August 2023, Peterborough City Council would be acting in contravention of the Regulations, which is unlawful.”

The Claimant went on to say that the matter under consideration related to her, albeit she said indirectly. Nevertheless, in our judgement, anyone who read the s. 5 report would likely conclude that it directly concerned the Claimant’s position as Monitoring Officer, and that she was in dispute with the City Council and challenging what she described as an illegitimately constituted and unlawful process.

287. Ms Banton submits that the Local Government Act 1972 places a blanket prohibition on disclosing and discussing information which is exempt from the press and public and that this extended to the s. 5 report. Information that is exempt from publication within Schedule 12A of the Act includes “Information relating to any individual”. Information is exempt if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information (paragraph 10 of Schedule 12A to the Act). This further aspect was not explored with Mr Gladstone or Ms Rose in cross examination and although Ms Banton makes reasonably detailed submissions about the Act in her written submissions, these do not extend to the meaning and effect of paragraph 10, including for example what it might mean in terms of the Respondent’s ability to communicate both internally and externally the fact that a named employee has left its employment and whether it might have been in the public interest for the s. 5 report to be published given it said the Council was acting unlawfully. However, what is clear is from paragraph 10 of Schedule 12A to the Act is that there is not a blanket prohibition on publication as Ms Banton submits.
288. A further article was published online, this time by CambsNews, on 27 August 2023 (pages 241 to 245 of the Supplementary Bundle). The most

likely explanation is that CambsNews had become aware of the article on www.peterboroughtoday.co.uk and took up the story, adding however in its own report that a special meeting of the council had been called “because of unknown accusations made against her” (page 241 of the Supplementary Bundle). In our judgement those additional comments do not support that anyone at the Respondent was briefing the media, or CambsNews specifically about the matter, let alone negatively. If the Claimant was believed by CambsNews to be the subject of a disciplinary hearing panel it was not a significant leap for it to infer that allegations, or as it said “accusations”, had been raised against her, albeit the details of which it did not know.

289. Whilst the email of 31 August 2023 issued to all staff (Detriment 40) was not sent by Mr Gladstone or Ms Pullen, the complaint plainly relates to the wording agreed between them which was included in the email. The email wording is factual and factually correct. The announcement, which was included in the all-staff Weekly Round Up was as follows,

“Last night an extraordinary Council meeting took place, which members decided to terminate the employment of the Council’s Director of Legal and Governance (Monitory Officer).

This followed a recommendation by the Chief Executive on the basis that Rachelle Tapping had not successfully passed her probation period.

Prior to this meeting, an independent panel was formed to review the evidence for both parties. That panel met on 14 August and after deliberation, concluded that the recommendation by the Chief Executive was reasonable and valid. Council was then required to meet to consider the recommendation of the Chief Executive as well as the advice, guidance and any recommendations of the independent panel and to then make a final decision...”

(page 3587)

There then followed the names of certain individuals for staff to contact about matters that would ordinarily be within the Claimant’s remit.

290. We accept Ms Rose’s evidence that the all-staff email reflected a “no surprises” policy or practice, whereby the Respondent endeavours to make staff aware in advance of matters that may attract media interest. The Respondent had issued an announcement when the Claimant had joined it and in our view it is unsurprising therefore, and consistent also with a no surprises policy, that it issued an all-staff email given the circumstances of the Claimant’s departure and what the Respondent felt was misleading / inaccurate media reporting on the subject. Indeed, even though the statement did not engage with the media reports, which in any event would merely have served to draw attention to them, it went at least some way to

dispelling any misleading impression that there were disciplinary issues of concern.

Detriments 42 and 43

By R unreasonably delaying and not providing any outcome to C's grievance of 2 August 2023.

Between 29 August 2023 and 24 October 2023, R ignored C's grievance of 29 August 2023. On 14 June 2023, by R not giving C the right of appeal against MG's decision recommending that her contract be terminated.

291. The Claimant emailed Ms Pullen on 2 August 2023, copying in Ms Bishop:

"Dear Mandy

Please see below. It is with regret that my health and the OH report is being ignored.

I wish to raise this as a formal grievance, namely that the CEO is ignoring an OH report and proceeding to allocate me work outside the scope of my job description, in further detriment to my health. Therefore the duty to protect my health and safety is being ignored by Peterborough City Council.

Please can you escalate this grievance as a matter of urgency.

Sharon is there anything the unions can do in this regard, which is a very serious matter."

292. The Claimant complains that there was unreasonable delay in the handling of the grievance, and that no outcome was provided to her. The alleged discriminators are said to be Ms Seymour and Mr Gladstone. However, we accept Mr Gladstone's unchallenged evidence that he had no knowledge of the matter, let alone that he influenced how the Claimant's concerns were dealt with, for example by giving any instruction or even indicating that the concerns should not be taken forward. No such case was put to him, for which there is in any event no evidence. As for Ms Seymour, she was not asked to investigate the grievance.
293. In case the Claimant intended to identify Ms Pullen rather than Ms Seymour as one of the two alleged discriminators, we shall address Ms Pullen's involvement. She replied to the Claimant the same day as follows:

"It would be worth you and I speaking about this first before any grievance is raised. As I understand it Matt has not yet seen nor would he understand the content of your OH report as I believe you haven't shared this with him. I certainly haven't shared the content

until such time as you and I discuss this report which will be tomorrow afternoon.

Therefore on this basis, I am not sure that there is a grievance.

Lets talk this through tomorrow at our meeting.”

(page 1618)

The simple point she was making was that if Mr Gladstone had not in fact seen the occupational health report or been apprised of its contents, he could not be accused of ignoring its recommendations.

294. The Claimant unequivocally accepted the point when she responded a few minutes later to say,

“My wrong assumption that you had spoken to him, happy to pause until we speak etc.”

This was another acknowledged assumption by the Claimant of improper conduct on the part of Mr Gladstone and the second time in as many months that she was wrongly accusing him of a disregard for her health and safety.

295. As we have already observed, the Claimant is an experienced, articulate legal professional. If Ms Pullen did not follow the matter up at a later date to ensure the matter was closed off, neither did the Claimant raise the issue again with her. She had been happy to pause the matter. If her view in the matter changed, then it was incumbent upon her to let Ms Pullen know. The fact she has not pursued any complaint about Mr Gladstone’s alleged disregard for the recommendations in the occupational health report rather suggests she continues to accept Ms Pullen’s immediate explanation.

296. The Claimant separately complains that her grievance of 29 August 2023 was ignored. Although she points the finger in this regard at Ms Seymour and Mr Gladstone, once again neither was involved in the matter. Her email was addressed to Ms Pullen and copied to Ms Bishop. She wrote:

“I wish to raise the following grievance. As a consequence of me issuing a race discrimination, harassment and victimisation claim in the employment tribunal which the Council was advised of on 14th July 2023. Further, as a consequence of my submissions dated 4th August 2023, to the illegitimately constituted independent panel, Matt Gladstone supported by Human Resources pursued a course of action against me, namely a decision to suspend me from work, a suspension which was unwarranted, unjustified, and in response to my protected act. This was also at great cost to the Council given that Counsel opinion was obtained on the matter, in relation to how to

suspend me in particular. This course of action amounted to victimisation under section 27 of the Equality Act 2010. Please can you investigate this grievance.”

(page 3493)

297. Ms Pullen responded to the Claimant the following day and confirmed that the grievance had been passed to Ms Spendelow.
298. Ms Spendelow says that she returned from annual leave in August 2023 to a significant volume of work. Mr Chapman was appointed as the Grievance Manager, but he had two weeks of leave in September 2023 (we have not been told the precise dates). Ms Spendelow’s evidence that she was due to catch up with Mr Chapman about the matter on his return, but failed to diarise a meeting, with the result that the issue slipped, was not explored or challenged during her cross examination. She and Mr Chapman eventually met on 16 October 2023, when they discussed the role of Investigating Officer and who might take it on. Within two days, Ms Spendelow emailed the Claimant to let her know that Mr Chapman was the Grievance Manager and that Rob Hill had been appointed to investigate the grievance (page 3491). She emailed the Claimant again on 23 October 2023, inviting her to a meeting on 25 October 2023. However, on 24 October 2023 the Claimant replied to say that she would not be attending the scheduled meeting. Amongst other things she accused Mr Gladstone of having misled and “probably lied” to full Council on 31 August 2023. She said,

“I therefore have no trust or confidence in your impartiality investigating my suspension grievance so will resolve all grievances at the Tribunal.”

(page 3491)

As Ms Spendelow was not the Grievance Manager or Investigating Officer, we assume by “you” that the Claimant was referring to Peterborough City Council.

299. Thirteenth Protect Act

On 29th August 2023 by C’s grievance against MG for suspending her

300. For reasons we shall come to, we have not upheld the Claimant’s complaints in respect of her suspension. Although the Claimant’s grievance about the matter was therefore not well-founded, in our judgement it cannot be said that the Claimant acted in bad faith in raising a grievance about the matter. Suspension is not necessarily a neutral act: Agoreyo v London Borough of Lambeth [2017] EWHC (QB). It is unsurprising that the Claimant challenged her suspension, many employees in her situation would have done so. The fact that she delayed

three weeks before raising a grievance about the matter and did not really explain in her grievance why she inferred that her suspension was linked to the two protected acts specifically referred to (page 3493) does not alter our view of the matter or lead us to infer that she was acting dishonestly when she raised her grievance. Whilst she may not have given the matter a great deal of thought, there is no obvious evidence of an ulterior motive. We are satisfied that in raising a grievance she was effectively looking to the Respondent to provide a coherent rationale for her suspension, even if Mr Gladstone had confirmed the reasons for her suspension in his letter of 8 August 2023.

The Law

301. We have addressed section 27 of the Equality Act 2010 at paragraphs 26 to 29 above. The claims are pursued in the alternative under sections 13, 26 and 27 of the Equality Act 2010. The relevant provisions of sections 13 and 26 are as follows:

13. Discrimination

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

26. Harassment

- (1) A person (A) harasses another (B) if—
- (a) A engages in unwanted conduct related to a relevant protected characteristic, and
 - (b) the conduct has the purpose or effect of—
 - (i) violating B's dignity, or
 - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
- (a) the perception of B;
 - (b) the other circumstances of the case;
 - (c) whether it is reasonable for the conduct to have that effect.

302. Ms Banton and Mr Dennis have set out much of the relevant law and applicable legal principles in detail in their respective submissions. Save that Mr Dennis refers to section 23(1) of the Equality Act at paragraph 22 of his written submissions, neither he nor Ms Banton has addressed the correct approach to the identification of comparators in discrimination cases. In fairness to Mr Dennis, he goes on to address why he says that certain of the Claimant's named comparators cannot be relied upon as actual comparators, their circumstances he says being materially different to the Claimant's. Regrettably there is no such analysis in Ms Banton's submissions, merely a reiteration of the comparators sought to be relied upon by the Claimant, with the result that we are left to consider for ourselves in each case what the relevant circumstances of theirs are, whether these are materially different to the Claimant's and, if so, whether there are some relevant similarities between their circumstances such that we may take account of the way in which the Respondent treated that person. We have been considerably assisted in this task by Cavanagh J's judgment last year in Martin v The Board of Governors of St Francis Xavier 6th Form College [2024] EAT 22 in which he considered the law relating to comparators in discrimination cases, and the interrelationship between the use of comparators and the shifting burden of proof. We refer in particular to paragraphs 59 to 68 of his judgment, including the highlighted, often cited comments of Lord Scott of Foscote in Shamoon v Chief Constable of Royal Ulster Constabulary [2003] ICR 337. Shamoon confirms that tribunals can sometimes avoid arid and confusing disputes about the identification of an appropriate comparator by concentrating primarily on the reason why a claimant was treated as they were. In Martin, Cavanagh J concurred with His Honour Judge Tayler's equally informative analysis in Virgin Active v Hughes [2023] EAT 130 regarding the interrelationship between the use of comparators and the shifting burden of proof.
303. Focusing on the reason why can also help to guide tribunals when considering claims under s.27 of the Equality Act 2010, since the tribunal is concerned with whether a respondent has subjected a claimant to detriment because they did a protected act. We shall come back to this.
304. In his written submissions, Mr Dennis addresses the alleged protected acts and detriments in turn, in each case highlighting and cross referencing relevant evidence and inviting specific findings and conclusions in relation to them. Ms Banton's analysis is more limited by comparison; her submissions do not specifically engage with Detriments 18 to 39, even if we have been able to discern for ourselves much of the Claimant's case from Ms Banton's cross examination of the Respondent's witnesses.
305. It is often said that direct discrimination is rarely overt or even deliberate. In her written submissions, Ms Banton highlights various statistics that bring home the workplace experiences of black and minority ethnic workers, including from the 2017 McGregor Smith Review, the Runnymede Trust's report on 'Misogynoir' and 'Racism at Work' surveys

undertaken by the TUC. The latter surveys suggest that conscious discrimination may be more prevalent than is often assumed. Even so, as Lord Browne-Wilkinson observed in Glasgow City Council v Zafar [1997] 1 W.L.R.1659, at 1664 D: “those who discriminate on the grounds of race or gender do not in general advertise their prejudices”. It remains the case, as Lord Nicholls said in Nagarajan that usually: “... the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances.” We have already referred to Sedley LJ’s suggestion in Anya v University of Oxford [2001] ICR 847 that tribunals look for indicators from a time before or after the decision or other matter complained of.

306. There are two specific matters on which Ms Banton and Mr Dennis disagree, namely: whether the House of Lords’ judgment in Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48 is essentially limited to its facts or of wider application; and whether the principles and approach in Royal Mail Group Ltd v Jhuti [2019] UKSC 55 apply to claims under the Equality Act 2010.
307. Dealing with Jhuti first. In Jhuti, the Supreme Court confirmed that when deciding what was the reason for dismissal in unfair dismissal claims, it may not be enough simply to consider what was subjectively in the mind of the decision-maker. Where the real reason is hidden from the decision-maker behind an invented reason, the tribunal must penetrate through that invention and decide the case with reference to the real reason. By contrast, the Court of Appeal’s decision in Reynolds v CLFIS (UK) Ltd [2015] EWCA Civ 439 makes it clear that the person who carried out the allegedly discriminatory act must have been motivated by the protected characteristic in question (either consciously or sub-consciously). The act does not become discriminatory simply because it was influenced by “tainted information” given by someone else with a discriminatory motive. Reynolds does not necessarily deprive a complaint of a remedy, since the wrongful acts of the person with the discriminatory motive may still cause the complainant loss in the matter; it is simply that the innocent ‘actor’ in the matter will not be stigmatised with a finding that they discriminated against the complainant nor will they be exposed to the risk of personal liability for discrimination, something that is reserved instead to those with the requisite discriminatory motive. The approach in Reynolds was followed by His Honour Judge Tayler in 2023 in the case of Alcedo Orange Ltd v Ferridge-Gunn [2023] EAT 78, in which he noted that the approach in Jhuti does not apply to discrimination claims, a point as he noted that was made by the Supreme Court itself in Jhuti.
308. As regards Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48, we do not agree with Ms Banton that the decision is limited to its facts, namely the provision or otherwise of a reference in the context of an ongoing employment tribunal claim for discrimination. Instead, the House of Lords explored the broader question of the reason why an alleged discriminator may have acted as they did. The claim and appeal, which

pre-dated the Equality Act 2010 was pursued under the Race Relations Act 1976. Mr Khan had complained that the Chief Constable failure to provide him with a reference was “by reason that” he had done a protected act. Lord Nicholls of Birkenhead, who gave the leading judgment in the case, confirmed that this did not involve the application of a “but for” approach and adopted his own reasoning in Nagarajan v London Regional Transport [2001] 1 AC 502, including what are now the seminal comments at the beginning of his judgment about the need for consideration of the mental processes of the alleged discriminator. Lord Nicholls confirmed that the reason why a person acted as they did is a question of fact.

309. In the course of his judgment in Khan, Lord Hoffman said,

“60. A test which is likely in most cases to give the right answer is to ask whether the employer would have refused the request if the litigation had been concluded, whatever the outcome. If the answer is no, it will usually follow that the reason for refusal was the existence of the proceedings and not the fact that the employee had commenced them. On the other hand, if the fact that the employee had commenced proceedings under the Act was a real reason why he received less favourable treatment, it is no answer that the employer would have behaved in the same way to an employee who had done some non-protected act, such as commencing proceedings otherwise than under the Act.”

310. There is one further issue we shall touch upon briefly, namely the relevance of findings of unfairness in discrimination cases. As Mr Dennis notes, the fact that an employee is treated unreasonably or unfairly does not of itself suffice to justify an inference of unlawful discrimination. Paragraphs 98 to 101 of the Court of Appeal’s judgement in Bahl v The Law Society and others [2004] IRLR 799 are instructive on this issue. Nevertheless, discrimination may be inferred if there is no explanation for unreasonable treatment. This is not an inference from unreasonable treatment itself but from the absence of any explanation for it. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16, it was held that a Tribunal had impermissibly inferred direct race discrimination solely from evidence of procedural failings in dealing with the claimant’s grievances, including their appeal against the rejection of those grievances. The EAT said:

‘Merely because a tribunal concludes that an explanation for certain treatment is inadequate, unreasonable or unjustified does not by itself mean the treatment is discriminatory, since it is a sad fact that people often treat others unreasonably irrespective of race, sex or other protected characteristics.’

311. Those observations resonate when we come to consider Ms Booth’s conduct towards the Claimant on 9 March 2023.

Conclusions

312. We have not upheld the Claimant's complaints in respect of Detriments 1, 2, 4, 8, 10, 14, 15, 18, 19, 21, 22, 26, 32.1, 32.2, 32.3, 32.5, 32.6, 35, 37 and 38(ii), as the Claimant has failed to establish the essential primary facts relied upon by her in support of her claim to have been subjected to unwanted conduct and detriment in respect of those matters.
313. Given that Detriment 1 is at the heart of the Claimant's assertion that there was a hidden agenda from the outset of her employment to remove her, we briefly address below why we conclude that Mr Gladstone's conduct of the meeting on 14 November 2022 did not in any event relate to the Claimant's race and was not materially influenced by her race or her first protected act (or his belief that she had done a protected act).

Detriment 1

On 14 November 2022, by Matthew Gladstone ("MG") conducting a hostile meeting with C pressuring her to sign the settlement agreement, related to race discrimination, with Birmingham City Council and strongly advising C to sign it.

314. Mr Gladstone's 'concern' on 14 November 2022, if indeed it is appropriate to label it as such, was that the Claimant had an unresolved, potentially distracting legal dispute with her former employer which he had failed to make Cllr Fitzgerald aware of in spite of a well understood working relationship between them based upon 'no surprises'. We can understand why Mr Gladstone had not initially shared this information with Cllr Fitzgerald following the Teams meeting with the Claimant on 20 October 2022, particularly given he understood the Claimant to be close to concluding a settlement agreement with Birmingham. The fact that he did not initially apprise Cllr Fitzgerald of the matter reinforces our conclusion that it was not a significant issue for Mr Gladstone and certainly not an obstacle to the Claimant's employment with Peterborough. Having asked ourselves the question posed by Lord Hoffman in Nagarajan, the answer, as Mr Gladstone's actions prior to 14 November 2022 confirm, is that Mr Gladstone would not have raised the matter with Cllr Fitzgerald had the dispute been concluded, whatever the nature of the dispute.
315. When it came to light on 14 November 2022 that the settlement agreement had not been concluded, it is understandable that Mr Gladstone considered whether it might prove a distraction. He needed the Claimant to hit the ground running. We accept that the reason why he encouraged her to conclude a settlement agreement was so that there would be a fresh start, as the Claimant said she wanted, and, a little more selfishly, so that she would remain fully focused on the difficult task ahead of her. He was not bringing unconscionable pressure to bear in the matter. The Claimant had volunteered information in relation to Birmingham and

approximately two weeks before starting at Peterborough had said that a settlement agreement was about to be concluded. We do not think that any reasonable worker would have considered themselves to have been disadvantaged by a further discussion of the matter in those circumstances and that it would be unreasonable for the Claimant to consider that in encouraging her to draw a line under the matter and see Peterborough as a fresh or clean start, Mr Gladstone caused the creation of an adverse environment. Mr Gladstone would have been similarly encouraging of any new Director of Legal and Governance. There are no grounds to infer that Mr Gladstone's conduct during the meeting on 14 November 2022 related to race or was materially influenced by race or the Claimant's first protected act.

Detriment 3

In February 2023, by MG asking if C knew Ms Omoregie (black).

316. We have concluded that on first being introduced to Ms Omoregie by the Claimant in early February 2023, Mr Gladstone asked them whether they were friends. He intended to ask them whether they knew one another because they had previously worked together. We do not accept the Claimant's efforts to portray Mr Gladstone as holding or expressing a racist viewpoint, or that it was "a deliberate attempt" to make her and Ms Omoregie "feel uncomfortable". We note that she did not refer to the matter in her letter to Mr Gladstone on 9 May 2023 in which she documented a range of other concerns. Although she did then subsequently raise the matter in her 20 May 2023 grievance, she did not suggest that Mr Gladstone had deliberately targeted her. Her comments regarding Mr Gladstone's motives are unwarranted and detract from the issue at hand, namely whether it was reasonable for his question to have had the proscribed effect.
317. Whilst we are satisfied that it was not Mr Gladstone's intention to violate the Claimant or Ms Omoregie's dignity or to create an adverse environment for them, there is no evidence that he corrected himself at the time or clarified what he meant by his question. It seemed to both the Claimant and Ms Omoregie that he was assuming that two female black professionals must know one another. In his written submissions, Mr Dennis cites various observations of Langstaff J in Warby v Wunda Group Plc [2012] Eq LR 536, including that,

"... it may be a mistake to focus upon a remark in isolation. The Tribunal is entitled to take the view, as we see it, that a remark, however unpleasant and however unacceptable, is a remark made in a particular context; it is not simply a remark standing on its own."

The difficulty for the Respondent is that there was no obvious context to enable the Claimant and Ms Omoregie to discern Mr Gladstone's meaning. It is essentially irrelevant that he has been able to clarify his

intentions within these proceedings if these were not apparent or reasonably apparent at the time. In our judgement, there is no reason why the Claimant and Ms Omoregie ought to have understood that he had in mind whether they had some previous professional connection that may have led Ms Omoregie to join the City Council. Mr Gladstone's question stayed with Ms Omoregie at some level, even if the impact was less pronounced than for the Claimant.

318. We obviously have regard to Elias LJ's observation in Land Registry v Grant [2011] ICR 1390 that Tribunals must not "cheapen" the significance of the words in section 26(1)(b) of the Equality Act 2010 by upholding complaints in respect of trivial acts that cause minor upset. Ms Omoregie does not seem to have been upset by Mr Gladstone's question, even if it stayed with her sufficiently that she recounted it when asked an open question by Ms Seymour as to whether she had experienced any discrimination at Peterborough. Notwithstanding the Claimant has in our judgement overstated the impact upon her and wrongly attributed a malicious motivation to Mr Gladstone, and that she did not initially complain about the matter, we ultimately conclude that it was reasonable for her to be offended by the comment because of the implicit suggestion, as she perceived it, that two black women in senior roles must know one another, alternatively that Ms Omoregie had not been recruited by the Claimant entirely on merit. Whilst there are no grounds to infer these were Mr Gladstone's views in the matter, we do not consider that it was unreasonable for the Claimant to be offended by the question and to experience an adverse work environment within the meaning of section 27(1)(b). We therefore uphold the complaint notwithstanding the question was effectively a slip of the tongue and that it was never Mr Gladstone's intention to cause offence.

Detriment 5

In or around March 2023, C complained to Edward Morris-Jones in HR about Michelle Abbott giving an allegedly dishonest written account about her, and asked for it to be pursued, but HR advised and decided to take no disciplinary action against Ms Abbott.

319. In our judgement, Mr Morris-Jones' advice in the matter was unexceptional, indeed we think it was the only advice he could sensibly offer in the circumstances. It is a moot point whether Ms Abbott's email to Mr Chapman potentially amounted to a protected disclosure, but regardless of its legal status, in our judgement it would have been contrary to recognised good HR practice to have commenced or even suggested disciplinary action as an immediate response to Ms Abbott's documented concerns. It certainly cannot be suggested that it was clear on the face of the email that the complaint was mischievous and in bad faith, even if Mr Morris-Jones discussed with the Claimant whether it was possible that Ms Abbott could be playing people off one another. In our view, most HR professionals would regard taking action against Ms Abbott as retaliation.

As it was, the Claimant seemingly gave insufficient thought to Ms Abbott's data subject rights or legitimate expectation that Peterborough would provide fair redress in respect of any legitimate concerns.

320. One of the stated key principles of the Respondent's grievance policy is that grievances should be resolved informally where possible. Whether or not Ms Abbott was understood to be raising a formal grievance, Mr Morris-Jones' advice was consistent with the spirit of that policy. In any event, as we have set out in our findings above, the Claimant agreed with his advice in the matter, in which case it is particularly difficult for us to understand her complaint now about the matter. We do not consider that any reasonable worker in the Claimant's situation would regard Mr Morris-Jones' advice as having been to their detriment. Furthermore, in the circumstances we have described, it would be unreasonable for the Claimant to consider that her dignity had been violated and an adverse environment created by advice she agreed with. In any event, there is no evidence or other basis to infer that Mr Morris-Jones' advice related to or was materially influenced by the Claimant's race. It had nothing to do with her first protected act about which Mr Morris-Jones was then entirely unaware. We are certain that had anyone else in the Claimant's position sought Mr Morris-Jones' advice in similar circumstances his advice would have been the same regardless of their protected characteristics. We do not uphold the complaint.

Detriment 6

In March 2023, by MG not inviting C to the meeting with the Government Department. The comparator is Rachel Edwards (white).

321. We do not consider Rachel Edwards to be an actual comparator for the purposes of the Equality Act 2010. There was a material difference between their respective circumstances in that Ms Edwards had been in post throughout 2022, this being the focus for the lessons learned session with DLUHC. Ms Edwards was well placed, as Mr Gladstone identifies, to talk about Peterborough's approach to member and officer engagement that year. She had a good grasp of the political dynamic and had assisted during the year in securing member buy-in to the improvement priorities across the City Council, an essential element of the Respondent's improvement journey. In our view, the appropriate comparator is a hypothetical one, namely a relatively recently appointed white Director of Legal and Governance, who was also Peterborough's appointed Monitoring Officer, who had only been in post for the last few weeks of the year under review and who was therefore unable to contribute significantly to any discussion of the key learning points that had emerged over the course of the year. The fact that there was an open invitation from DLUHC and that the Claimant's inclusion might have provided an opportunity for her to build her profile and even gain valuable insights as to the Intervention Team's evaluation of Peterborough's progress to date and future areas for focus, does not lead us to infer that the Claimant was

racially discriminated against in the matter. We conclude that a hypothetical comparator would have experienced the same treatment and, as with the Claimant and along with the rest of the senior leadership, would have received feedback from the meeting through CLT.

322. The Claimant asserts that she was deliberately not invited to the meeting on 8 March 2023 because she was not welcome, that Mr Gladstone did not want effective Golden Triangle working and that “he preferred to belittle me by inviting my direct report to a meeting with a government department” (paragraph 104 of her witness statement). Yet on 17 February 2023, just a few days after Mr Gladstone had told Ms Midgley that Ms Edwards rather than the Claimant should attend the DLUHC, the Claimant wrote in an email to Ms Booth that they were “the golden triangle/dream team”, an odd observation to volunteer if Mr Gladstone was actively undermining effective team working. Her complaint seems to be grounded less in her race and any protected acts of hers, rather than in her perception that she was belittled because her direct report was invited, a complaint she also makes regarding her role and status during the May 2023 elections.
323. Whilst we do not uphold the complaint, later in these reasons we have certain observations to make on the subject of inclusivity.

Detriment 7

On about 9 / 10 March by Cecilie Booth (“CB”) becoming extremely aggressive and verbally attacking C (and Ms Omoregie (black)) on the call. The comparator is Elaine Redding (white).

324. The limited notes of Ms Booth’s 1-2-1 meeting with Mr Gladstone within the Bundle and available emails between them evidence some propensity on Ms Booth’s part to be critical of others. Ms Booth was undeniably aggressive on the Teams call on 9 March 2023. The question is whether her aggression was race related or otherwise materially influenced by the Claimant and Ms Omoregie’s race or the Claimant’s first protected act.
325. As we have noted already in our findings, after Ms Booth became aware that members of the administration were unhappy with her response to the motion, she did not publicly single the Claimant and Ms Omoregie out for criticism. Her email does not therefore indicate a discriminatory mindset. That might have been the end of the matter had the Claimant not suggested a call. In other words, there is no evidence that Ms Booth was minded to escalate matters because, consciously or otherwise, it involved two senior black colleagues. Her irritation initially stemmed from the stress of trying to deal with the matter on the go the previous day when she had been in London for a meeting with DLUHC, rather than being personally directed at the Claimant or indeed Ms Omoregie. In an email to a colleague she complained,

“There were 100s of emails about it yesterday and I was on a train and tube, trying to keep up.”

However, as the day went on she evidently became increasingly irritated, culminating in her losing her temper on the call with the Claimant, Ms Omoregie and Ms Redding. There is no evidence that it was premeditated or, as the Claimant asserts, that Ms Booth deliberately treated her in this way because she was a black female. Nor do we infer that at some subconscious level Ms Booth believed that it was acceptable to direct her ire at the Claimant or indeed Ms Omoregie, because they were black and should be subservient. Ms Seymour’s investigation notes paint a consistent picture of Ms Booth being quick tempered in discussions of financial matters. When Ms Redding recounted the occasion when she perceived Ms Booth’s response to Ms Atri to have been disproportionate she said, “it was to do with money again” (page 4003). She went on to describe comments directed to herself by Ms Booth in relation to another matter as “emotive and unnecessary”, before going on to observe,

“My view is when it came to the money the command and control aspect of that came into play and the behaviours changed.”

(page 4004)

So although she initially told Ms Seymour that she had not been challenged in the same way as the Claimant, she had in fact gone on to describe a consistent pattern of behaviour whenever Ms Booth perceived any challenge to her authority on financial matters.

326. There is further support for this in Ms Omoregie’s observation that “there are things she is passionate about, keen to keep finances in order etc”, and in Ms Booth’s email to Mr Gladstone on 9 March 2023, when she wrote,

“I don't think people understand, and this goes on and on and on and on. ...I'm concerned that we are moving away from the corporate ownership we seem to have created and back to a free for all for services. Need some support to reign it in....”

(page 894)

327. We conclude that in any discussion involving issues with financial implications for Peterborough, regardless of who that discussion was with and any protected characteristics of theirs, it was Ms Booth’s ‘way or the highway’. In other words, she did not discriminate in her ‘command and control’ approach. We do not therefore uphold the Claimant’s complaint that Ms Booth’s conduct towards herself and Ms Omoregie on 9 March 2023 was related to race or less favourable treatment on the grounds of race, that is to say materially influenced by race.

328. As regards the Claimant's complaint that Ms Booth victimised her, we have found that Ms Booth was unaware of her first protected act at this time. Accordingly, it was not a factor in her conduct towards the Claimant.

Detriment 8

On 13 March 2023, by MG excusing CB's hostility towards C and asking C to resolve it and to adapt her own style to "challenging situations and emotional intelligence". The comparator is Rachel Hickmott (white).

329. We have not upheld the Claimant's description of the meeting with Mr Gladstone on 13 March 2023. Nevertheless, for completeness, we shall address the Claimant's complaint that she was treated less favourably than Ms Hickmott. In our judgement, Ms Hickmott is not an actual comparator. Whilst we do not think Mr Dennis' first point about the Claimant's complaint being about how the feedback was given (paragraph 105 of his written submissions) necessarily points to a material difference in the two situations, and do not agree his second point that Mr Gladstone's understanding of Ms Abbott and Ms Booth's conduct materially differed (on the contrary, he understood each of them to have been rude), we agree with his third point, namely that one situation involved behaviour between two senior directors and the other involved behaviour between a senior manager and a more junior Executive Assistant. In our judgement, that difference explains any difference of approach, if indeed there was such, in that there was a fundamental power imbalance in the latter situation which made it much more difficult for Ms Hickmott to resolve the matter herself. She had found herself caught between the Claimant and Ms Abbott, who had been rude to her in circumstances where she was simply doing as she had been instructed by the Claimant. The more obvious comparator would be Ms Omoregie, who worked on the response to the member's motion at the Claimant's request and who had seemingly been shouted at as a result. Be that as it may, we do not consider that Mr Gladstone in fact treated the Claimant and Ms Hickmott differently. We accept that Mr Gladstone merely suggested to the Claimant that an apology from Ms Abbott might help diffuse the situation. In which case, as we see it, in each situation he put forward a constructive suggestion as to how he thought a situation of tension arising from perceived poor behaviour could be resolved in an emotionally intelligent way. The solution may have differed in each case, but his approach was consistent.

330. We do not uphold the complaint.

Detriment 9

On 20 March 2023, by MG suggesting that Mark Greenburgh be C's executive coach.

331. We refer to our detailed findings in respect of this matter. In our view, Mr Gladstone's low key response to the Claimant on this issue on 5 April

2023 (page 1071) ought to have drawn a line under the matter. In spite of his email, Ms Pullen's assurances in the matter on 24 March 2023 and Mr Greenburgh's flat denial of any impropriety, the matter has been pursued to trial in the terms indicated in paragraph 96 above notwithstanding the absence of any evidence to support the Claimant's assertions in that regard. As we have set out in our findings, Mr Gladstone was looking to support the Claimant in her continued development when he suggested Mr Greenburgh as a mentor/coach. Any reasonable worker in the Claimant's situation, who understood as she did that he was unaware of Mr Greenburgh's involvement in relation to Birmingham, would not regard his actions as being to their detriment and it was unreasonable in the circumstances described for her to believe that her dignity had been violated or an adverse environment created. In any event, Mr Gladstone's proposal of Mr Greenburgh did not relate in any way to the Claimant's race and was not materially influenced by her race or her first protected act (or his belief that she had done a protected act). Instead, it was intended by him and ought reasonably to have been understood by the Claimant as a thoughtful and supportive suggestion by her Chief Executive. The complaint is not well-founded.

Detriment 10

On 22 March 2023, by MG's comment, *"diversity is why you are here"*.

332. We have concluded that Mr Gladstone merely concurred with Cllr Hogg's statement on 22 March 2023 that there was a strong leadership team in place, including strong, decisive women and acknowledged that the Claimant's recruitment served to bolster the CLT.
333. If the Claimant perceived that this created an adverse environment for her, firstly it was unrelated to her race, but secondly and in any event it would be unreasonable for her to consider that his comments had the prohibited effect. By his comments Mr Gladstone was affirming the Claimant's credentials and implicitly acknowledging that she had been appointed on merit rather than a token appointment. In any other circumstances, had Cllr Hogg complimented Mr Gladstone on his leadership team and said that a recent recruit, whose appointment had been fully supported by Mr Gladstone, was a positive addition to that team, we are in no doubt that Mr Gladstone would have concurred. We do not uphold the complaint.

Detriment 11

On 24 March 2023, by CB partially upholding the grievance against C and referring to "other grievances".

334. Given that Employee A had alleged that the Claimant "did nothing" in circumstances where Employee A said she could not have been clearer as to the effect her workload was having on her wellbeing, asked Ms Booth why it had been allowed to happen, and identified the Claimant as having been the decision maker, and that her concerns were echoed by Ms

Abbott (who had discussed the issues with Mr Chapman in January 2023 before setting out her perspective at some length on 8 February 2023), we are satisfied that it was reasonably open to Ms Booth to conclude that the decision towards the end of January 2023 to engage an external law firm had come a little late.

335. Mr Dennis submits that Ms Booth decision to partially uphold Employee A's grievance did not constitute a detriment. We disagree. Whilst there were no immediate adverse consequences for the Claimant in the sense of any disciplinary or capability process, in our judgement it cannot be said that no reasonable worker in the Claimant's position would have thought themselves to have been disadvantaged in their employment. Ms Booth found that the Claimant had failed to put in place appropriate support and, by implication, that this was because she had failed to listen sufficiently carefully to Employee A's concerns. It could reasonably be perceived as a criticism of the Claimant regardless of the fact that no further action was warranted. That remains our view even if Ms Booth was particularly careful in her choice of language and notwithstanding she also found there to have been organisational shortcomings in terms of the Respondent's practices around managing staff who experience work related stress. We think anyone in the Claimant's situation, particularly in the early months of their employment when they are endeavouring to embed themselves in the organisation and establish their credentials, would feel such a decision keenly.
336. However, we do not agree with the Claimant when she says, "there was no respect for my position because of my race". Ms Booth was required to deal with Employee A's grievance fairly and come to her own judgement in the matter. The Claimant had no legitimate expectation that the grievance should be rejected purely out of respect for the Claimant or because, as the Claimant asserts, "I should be able to run the services as I see fit". If we were to accede to that proposition it seems to us that no grievance would ever be upheld. If, as the Claimant asserts, Ms Booth was seeking to discredit her, Ms Booth would surely have expressed herself in the matter in more forthright and critical terms, as indeed she had a reputation for. Instead, her comments to Employee A about the Claimant having only recently joined Peterborough and needing time to embed herself, were offered in defence of the Claimant's handling of a situation which she had effectively inherited.
337. As regards the further complaint that Ms Booth referred to other potential grievances, we refer to our finding at paragraph 119 above that Ms Booth was trying to support the Claimant by heading off potential future grievances and even resignations. It is consistent with Ms Booth's actions early on in the Claimant's employment when she had shared her own unhappy experience of a grievance at Peterborough when she had felt unsupported. She shared this experience with the Claimant in the hope that the Claimant would know where to go for support should she ever face a grievance. The fact that the Claimant has, belatedly questioned the

accuracy of the meeting notes suggests to us that she recognises that they support Ms Booth and Ms Pullen's accounts. We agree with Mr Dennis that no reasonable employee in the Claimant's situation would regard the comments as being to their detriment. In any event, there are no grounds to infer that the comments related in any way to the Claimant's race or were materially influenced by her race (or her first protected act, of which Ms Booth remained unaware). We are confident that Ms Booth would have offered the same advice to anyone else in those circumstances regardless of their race or any other protected characteristics of theirs.

Detriment 12

On and after 24 March 2023, by Ms Pullen not addressing C's discrimination complaints which she raised that day.

In our judgement, there is an entirely innocent explanation for why Ms Pullen took no action on the Claimant's concerns. When they first discussed the matter on 24 March 2023, the Claimant was clear that it was a confidential, off the record conversation that was not to be shared with others. The meeting concluded on the basis that the Claimant wished to reflect on the matter whilst on holiday. Her immediate follow up email that day was not a request for any specific, immediate action on Ms Pullen's part. Thereafter, Ms Pullen did not see the Claimant's email of 5 April 2023 and accordingly was unaware that the Claimant was potentially looking to Ms Pullen to take action in the matter or at least wanted a further discussion. By the time Ms Pullen saw the email in or around June 2023, the situation had moved on in that the Claimant had filed a formal grievance which was under investigation, in which case there was nothing further for Ms Pullen to do in the matter. The Claimant never indicated otherwise. None of this had anything whatever to do with the Claimant's race or her first protected act or Ms Pullen's belief that she had done a protected act.

Detriment 13

On 5 April 2023, by Ms Pullen refusing C's choice of executive coach.

338. In our judgment, it is questionable whether the Claimant was subjected to detriment in being refused her choice of mentor/coach. There is no evidence that members of the CLT or other senior leaders had complete freedom of choice in the matter and that their preferences were accommodated regardless of the circumstances, for example any identified areas for development. The 1-2-1 notes and the Claimant's interactions with Ms Pullen and Mr Gladstone evidence to the contrary that the Claimant understood that it was something to be discussed and agreed.
339. Even if we were to be satisfied that a reasonable worker in the Claimant's position might consider themselves to have been disadvantaged in the

matter, we still do not consider the complaint to be well founded. No comparator is identified in the List of Issues, in which case the stated default position is that the Claimant relies upon a hypothetical comparator. We have identified already that there is no material from which we might draw conclusions as to how a hypothetical comparator would have been treated such as to shift the burden of proof in the matter to the Respondent. Ms Banton seems not to have addressed the matter in her written submissions since paragraph 77 does not obviously relate to Detriment 13, rather to Detriments 11 and/or 12 which she has grouped together with it.

340. In any event, even if the burden were to shift to the Respondent in the matter, in our judgement Ms Pullen has provided a credible and weighty, non-discriminatory explanation for why she did not regard Ms Heron to be suitable in terms of what was then required. We do not consider her description of Ms Heron and others as being more in the nature of personal lifestyle coaches to have been intended as a pejorative observation. The Claimant was by then just a few weeks away from the end of her probation period and Ms Pullen was hearing reports that her “breadth and depth of knowledge / understanding is a cause for concern in some areas”. As with Mr Gladstone’s suggestion of Mr Greenburgh in March 2023, we conclude that Ms Pullen was endeavouring to be supportive of the Claimant even if she did not spell out to her that there were concerns from a probation perspective. We do not infer that the Claimant’s race was a factor in Ms Pullen’s thinking in relation to the Claimant and there is no evidence whatever that the Birmingham matter was on her mind. Ms Pullen’s explanation at the time was as follows:

“Essentially what PCC are looking for is someone who knows the MO role in detail and can support to develop Rochelle’s knowledge at Director level accepting that this is a development role for her.”

341. Whilst we acknowledge Ms Heron’s credentials in the field of Diversity and Inclusion Consultancy and note her stated experience of guiding individuals to achieve career breakthrough and leadership success, what was required at that time was someone with direct knowledge of the Monitoring Officer role so that they could support the Claimant’s learning and development in role. That is reinforced by the Claimant’s actions in May 2023 when she turned to Mr Turner for support and to mentor her. Ms Heron did not have the requisite knowledge of the role and in her witness statement does not identify any other relevant experience of hers that might have qualified her in that regard. We are certain, regardless of any protected characteristics of theirs, that any other person in the same or similar circumstances would likewise have been steered towards a mentor/coach with direct knowledge of the role. We do not uphold the complaint.

Detriment 16

On 6 April 2023 at a 1-2-1 meeting, and at the subsequent CLT meeting in April 2023, by MG suggesting that C needed to lead matters personally. The comparator is Simon Lewis (white).

342. Mr Gladstone said that the Claimant needed to lead on the RedQuadrant review of Legal Services because it was one of her key objectives. He believed that she had not gripped the issue sufficiently and that she was failing to provide essential leadership and strategic direction. This was not about her race or her dispute with Birmingham or, as Ms Banton submits, about denigrating the Claimant. In the Claimant's own words there was a need for her to get more under the bonnet. The same observation can be made in relation to the commercial entities work. We do not consider in any event that the Claimant was subjected to any detriment by Mr Gladstone in the matter. It was ultimately his responsibility as Chief Executive to ensure that the CLT delivered on its objectives. He was giving the Claimant timely and constructive feedback and a firm steer so that she might get these matters back on track. Her complaint sits uncomfortably with her further complaint that Mr Gladstone's feedback on 3 and 10 May 2023 came too late in the day. In our judgement, no reasonable worker in the Claimant's position would have regarded Mr Gladstone's comments and feedback on 6 April 2023 as disadvantaging them in the circumstances. It was constructive and supportive feedback in a 1-2-1 meeting at which such comments and feedback might reasonably be expected to be given by a Chief Executive to a Director who had a shared responsibility for delivering the Respondent's objectives and its continued improvement. The complaint is not well founded.

Detriment 17

On 11 April 2023, by CB sending photos of almost naked black women to the CLT WhatsApp group.

343. Context is all, both in terms of whether the conduct complained of relates to a protected characteristic and whether it is reasonable for a complainant to regard the conduct as having created an adverse environment within the statutory wording.
344. We have reflected on whether the Claimant was prone to take offence, or indeed even of a mind to do so because of the tensions in her working relationship with Ms Booth, whom she believed had discriminated against her. Certainly, we do not consider that Ms Booth's comments contrasting her view of a beach in Rio de Janeiro and the statue of Christ the Redeemer with Mr Chapman's photograph of his view of his colleague Rob across the desk from him was deeply offensive as the Claimant suggests. In our judgement it would be encouraging hypersensitivity on the Claimant's part if we were to uphold any complaint she might make about that aspect, which she has not pursued as a legal complaint and

about which she did not make any complaint when she submitted her grievance on 20 May 2023. The Claimant has expressed herself on that aspect in terms that lend an impression that she is looking for a reason to criticise Ms Booth. Nevertheless, as regards the picture, we take on board that the Claimant was the only black member of the WhatsApp group. In our judgement that fact, combined with the picture's focus on the black performer's exposed buttocks, rather than for example her abilities (or otherwise) as a performer or dancer, lead us to conclude that the image can be said to relate to race and that it was ultimately reasonable for the Claimant to feel that it created a degrading environment for her and black women in general. Had the Claimant been the only female in an otherwise all male WhatsApp group, we think it would have been recognised more readily that the picture had the potential to cause offence. As with Detriment 4, we remind ourselves once more of Elias LJ's observation in Grant that Tribunals must not "cheapen" the significance of the words in section 26(1)(b) of the Equality Act 2010 by upholding complaints in respect of trivial acts that cause minor upset. Whilst we think that the upset caused to the Claimant was not particularly significant, we think it did offend her sense of what it is and what it takes to be a successful professional black woman, and for that reason we uphold the complaint.

345. For the avoidance of doubt we are certain that Ms Booth did not set out to offend, on the contrary that it was intended as a light hearted communication with her colleagues back in the UK, as her further messages evidence. Nevertheless, and whilst we do not consider the impact upon the Claimant was at the level she now suggests, the image does not cease to be an act of harassment simply because, as we conclude, the Claimant was at least minded to complain about the matter given in particular that Ms Booth had partially upheld Employee A's grievance.

Detriment 18

On 24 April 2023, by MG, at another meeting and in the presence of HR, ambushing C about another grievance made by [Employee C] against her.

346. Although we have not upheld the Claimant's allegation that she was ambushed by Mr Gladstone, in our judgement no reasonable worker in the Claimant's position would have considered that they had been disadvantaged in the particular circumstances. Furthermore, it was unreasonable in the circumstances described for the Claimant to believe that her dignity had been violated or an adverse environment created. Mr Gladstone simply relayed to her that there had been a grievance, the details of which we believe were summarised to her some little while later. Mr Gladstone was not looking to the Claimant to comment on the grievance and, in doing so, prejudicing her rights in the matter, including her ability to have a trade union representative or work colleague present during any substantive discussion.

347. For the reasons we have already touched upon, there is no evidence that the Birmingham matter had any significance in Mr Gladstone's mind beyond the discussions on 14 November 2022. Certainly, we do not infer from the Claimant having alluded to the matter on 5 April 2023 that it then became an issue of concern for Mr Gladstone and materially influenced his actions in alerting the Claimant to Employee C's grievance. The evidence points to the Birmingham matter having grown in significance within the Claimant's mind, rather than Mr Gladstone's.
348. The second and third protected acts had no bearing on Mr Gladstone's actions on 24 April 2023 since he was then entirely unaware of them.
349. In summary, although Employee C's grievance may have been unwelcome, it is understandable that Mr Gladstone and Ms Spendelow met with the Claimant to alert her to it. There is nothing to suggest that their actions related to her race or constituted less favourable treatment of the Claimant because she is black. They were supportive of her requests that the grievance and the whistleblowing elements contained within it should be independently investigated outside of Peterborough. The complaint is not well founded.

Detriment 20

On 3 May 2023, by MG informing C that he was thinking of extending her probation period. The comparator is Ms Booth (white).

350. We are unclear why Ms Booth is said to be a comparator in terms of the act complained of. The matter is not addressed in Ms Banton's written submissions. In our judgement, there is no explanation for why Ms Booth might be a comparator (whether actual or evidential) in terms of Mr Gladstone's actions on 3 May 2023 when he informed the Claimant that he was thinking of extending her probation. We were not told that Ms Booth or other past or current members of the CLT had had their probation periods extended (or indeed, not extended in circumstances where they were perceived not to have met the performance standards of their role).
351. The Respondent's documented Probation Procedure (pages 2608 to 2621) envisages that agreed improvement plans will be put in place in relation to probationary staff who are not meeting the required performance standard and that when any such plans are confirmed in writing this will include information regarding the consequences of not reaching the agreed standards. There was no agreed improvement plan for the Claimant, nor discussion of such and she was not warned that there might be consequences should she not meet any agreed plan, for example that her probation period might be extended or that she might be dismissed. But if it could be said that the Claimant was thereby treated unfairly, that does not of itself mean that Mr Gladstone or anyone else discriminated against her. Once the probation review form was brought to Mr Gladstone's attention, arrangements were made to transfer the information from the 1-2-1s into the form. The 1-2-1s provided an

opportunity for the Claimant and Mr Gladstone to discuss her progress. Although, as we say, the Claimant was not on notice that she may not be meeting the required standard, in other respects the information captured during the 1-2-1 discussions mirrored or even exceeded what might have been included on the probation review form, which seems to have been designed with more junior level employees in mind in so far as it deals with quality and accuracy of work, attendance and time keeping. Perhaps more pertinently, there is a ready, non-discriminatory explanation for Mr Gladstone's failure to adhere to the Procedure, namely he was unaware of it over several months and instead adopted the same approach that he had himself experienced, namely regular 1-2-1s.

352. In the absence of contemporaneous notes of their meeting on 3 May 2023 and as we said already in our findings above, we have been informed in our view of that meeting by the Claimant's conduct at the subsequent meeting on 10 May 2023 when the same issues were discussed, albeit at greater length and during which Mr Gladstone not unreasonably perceived the Claimant as rude and condescending. We accept that he reasonably perceived her tone and behaviour at the earlier meeting on 3 May 2023 to be defensive and aggressive. However, she had been caught off guard and, we conclude, perceived his feedback as a personal attack. It had been discussed at the Claimant's 1-2-1 on 20 March 2023 that she was a litigator by trade and that she needed to be more strategic. Faced with what was undoubtedly unwelcome news and critical feedback, the Claimant might have listened to what Mr Gladstone had to say, however unwelcome and regardless of her own perspective in the matter. Experiencing her tone and behaviour as defensive and aggressive, Mr Gladstone told the Claimant that she was being "aggressive".
353. Although the Claimant has not pursued any claim in respect of Mr Gladstone's reference to her on 3 May 2023 as "aggressive", for example that this was an act or harassment or less favourable treatment, it is plainly potentially relevant evidence. The characterisation of black women, especially black women of Caribbean ethnicity, as difficult and aggressive is a reasonably well understood racial trope. We have reflected on the fact that someone with that understanding and awareness, in particular at Mr Gladstone's level, might well avoid referring to a black woman as aggressive, even where, viewed objectively, their behaviour might warrant that description and notwithstanding the Claimant has herself used the term quite a number of times in her witness statement and elsewhere to describe Mr Gladstone's and others' conduct.
354. Mr Gladstone's description of the Claimant as "aggressive" was particularly unfortunate. Whilst he came to the meeting with the specific intention of telling the Claimant that he was thinking of extending her probation, in other words this was not something he resolved upon during the meeting itself because he perceived her to have behaved aggressively, nevertheless we have anxiously weighed in our minds what, if anything we might infer from the comment. Anger is a well understood

human response to perceived threat. Even if Mr Gladstone's conduct of the meeting on 3 May 2023 cannot otherwise be criticised, he must have known that the Claimant might be taken by surprise by the news he was about to deliver, with the result that she might become upset, defensive or even angry. These would have been entirely natural emotions and responses on her part. The situation called for emotional intelligence. Regardless of her seniority, we think that calling the Claimant aggressive was not an emotionally intelligent way to handle the discussion, since it served to escalate rather than de-escalate any tensions in the room. However, we conclude that it was no more than a momentary lapse of judgement on Mr Gladstone's part rather than signifying anything more. However unfortunate, we conclude that his description of the Claimant as "aggressive" did not reflect that he was stereotyping her as a difficult and aggressive black woman or that consciously or sub-consciously this was how he viewed her. It was grounded instead in his perception of her tone and behaviour during the meeting, which regardless of her race and protected acts could ultimately legitimately be described by him as "aggressive".

355. As we set out elsewhere in our findings and conclusions, Mr Gladstone and others had genuinely held concerns regarding the Claimant's performance in the role, concerns which are documented in the Bundle and described in some detail by them, even if, as we say, they were not documented within the Respondent's normal probation review form. The weight of evidence in this regard and our evaluation of it is not disturbed by Mr Gladstone's description of the Claimant on 3 May 2023 as "aggressive" nor indeed by him asking the Claimant and Ms Omoregie in early February 2023 whether they were friends. We do not infer more from those two comments even though we have upheld the Claimant's complaint of harassment in relation to the latter.

Detriment 23

On 12 May 2023, by MG temporarily extending C's probationary period.

356. In our judgement, Mr Gladstone's decision to temporarily extend the Claimant's probation period was entirely understandable and had nothing to do with her race or any protected acts of hers. Indeed, if anything, we think the Claimant would potentially have had cause to complain had Mr Gladstone reached a decision on the matter before the weekend given the range of matters they had discussed and his need to review her note in further detail and reflect on her conduct during the meeting. We do not think that any reasonable person in the Claimant's position would say they had been subjected to detriment by having their probation period extended to enable the relevant decision maker to reflect and come to an informed decision, including if necessary with the benefit of legal advice.
357. For the avoidance of doubt, we are satisfied that Mr Gladstone genuinely wished to take his time in the matter and come to a fair and lawful

decision. There is no evidence that it was a cynical manoeuvre on his part intended to lend an impression that he retained an open mind in the matter when in fact he had already decided to recommend the Claimant's dismissal. He was not treating the Claimant less favourably than he would have treated anyone else in similar circumstances. Even if the Claimant had persuaded us that she reasonably regarded the extension of her probation period by a few days as disadvantaging her, Mr Gladstone's decision in the matter did not relate to her race, nor was it materially influenced by her race or the fact she had done and/or was believed to have done one or more protected acts.

Detriment 24

On 16 May 2023, by MG's decision that C had not passed her probation.

358. We share certain of Mr Gladstone's observations regarding his meeting with the Claimant on 10 May 2023 which he sets out at paragraphs 102 and 103 of his witness statement. In particular, we find that the Claimant's approach did not help create the conditions for a collaborative or constructive discussion and that she demonstrated poor self-awareness during the meeting. The meeting notes do not evidence the open, respectful exchange one might expect of a senior Director in discussion with their Chief Executive. Ultimately, however, the issue is less what we think than what Mr Gladstone believed in the matter. In our judgement, the notes of the meeting amply support his perception that her conduct in the meeting was poor, that she was rude and condescending to him as Chief Executive and that she was unwilling to accept or take on board any of his feedback. We accept that he reviewed her note for the meeting but concluded that there was limited substance in terms of progress or impact to date, a conclusion that is supported by the ongoing issues referred to already in relation to the review of Legal Services, as well as our observation that the Claimant seemed to be on the back foot in relation to the commercial entities and the Improvement Panel's feedback little more than a week later that,

“... the Council still had work to do in order to get to grips with the Council's commercial entities.” (page 4154)

359. Whilst Mr Gladstone's decision was plainly to the Claimant's detriment, she has not put forward facts from which we might infer that Mr Gladstone's decision and conclusions in the matter related to her race or were materially influenced by her race or any protected acts, or perceived protected acts, of hers. As we have observed already, the concerns expressed in his letter of 16 May 2023 are consistent with what he told the Claimant both during her 1-2-1 on 3 May 2023 and at the probation review meeting on 10 May 2023 and they are evidenced in the contemporaneous documents in the Bundle, including in the Claimant's 1-2-1s, and corroborated in various respects by the Respondent's other witnesses.

360. We infer nothing more from Mr Gladstone's failure to follow the Respondent's documented Probation Procedure. He was unaware of the Procedure until March 2023 by which point he had an established practice of documented regular 1-2-1s with the Claimant which mirrored his own experience during his probation period. As we have observed already in relation to Detriment 20, if the Respondent might be said to have acted unfairly in departing from its documented procedure, of which Mr Gladstone was unaware until the final weeks of the probation period, in our judgement that unfairness is explicable by Mr Gladstone's lack of understanding of the correct approach rather than any discrimination (including victimisation) on his part. If, as Ms Banton put to Mr Gladstone, it was his plan from the outset to monitor the Claimant and line her up for dismissal, it rather begs the question why he failed to monitor her and line her up for dismissal using the Respondent's documented procedure. As we have said already, we do not accept that Mr Gladstone or anyone else had any such agenda in relation to the Claimant.
361. Even if the burden of proof in the matter were to have shifted to the Respondent, Mr Gladstone has satisfied us that the Claimant's race and her protected acts had nothing whatever to do with his decision that she had not passed her probation, which was instead firmly grounded in a genuine and reasonably held belief, shared by others, that she was not performing at the level required for the role and his further conclusion, particularly on the strength of the meeting on 10 May 2023 that his assessment in the matter would not change if the probation period was extended.

Detriment 25

By delaying the formal process of investigation into the grievance dated 20 May 2023. After 20 May 2023, by failing to conclude the grievance of that date before the ET1 date (14 July 2023).

362. We refer to our findings above. There is a simple non-discriminatory explanation for the delay between 20 May and 14 July 2023. The parties tried to resolve their dispute and thereafter the Claimant was on holiday. That has nothing whatever to do with the Claimant's race or any protected acts of hers.

Detriment 27

On 8 June 2023, by MG not inviting C to the LG[C] awards. The comparator is Rachel Edwards (white).

363. As we have noted already in our findings, Ms Rose was not asked why she settled upon the proposed guest list. In his written submissions, Mr Dennis refers to the decision of Elias J in Jesudason v Alder Hey Children's NHS Foundation Trust [2020] ICR 1226, including the following observations at paragraph 93 of his judgment:

“... But a finding of discrimination of this nature is a serious matter and in my view it would generally be unfair for a tribunal to make such a finding without the relevant party being given the opportunity to rebut the basis of that charge. Whether a witness has had that opportunity should not be judged in a formalistic or technical way, focusing on the particular way in which questions were framed in cross-examination, but by looking at the substance of what was put. Did the witness have a fair chance to deal with the basis on which discrimination was alleged? If not, there would have to be very cogent evidence indeed before a court could conclude that a finding of discrimination was overall fair.”

364. In fairness to Ms Banton, Ms Rose does not address the matter in her witness statement. Nevertheless, it is clear from the email at page 1499 of the Bundle that the proposed guest list was compiled by Ms Rose, even if Mr Gladstone and Cllr Fitzgerald gave it their blessing. In the circumstances, we cannot entirely overlook that Ms Rose and, to a lesser extent, Cllr Fitzgerald did not have a fair chance to address the matter at Tribunal, even if the complaint is directed at Mr Gladstone.
365. In our judgement, whoever had been tasked with putting together a guest list, would have focused on those individuals who had been part of Peterborough’s improvement journey in 2022. Plainly that included Mr Gladstone and Ms Booth. Mr Gladstone notes that the attendees included two councillors and three winners of internal Peterborough City Council staff awards. Ms Edwards’ inclusion was certainly consistent with the work she had done to secure buy-in to the improvement priorities across the Council, referred to elsewhere in this judgment. Ms Rose’s attendance reflects her position as Head of Communications.
366. Even putting aside that she was one of the Golden Triangle, the Claimant points out that all those who attended the event were white, notwithstanding the Respondent’s workforce and councillors are from a range of diverse backgrounds. She additionally highlights that Ms Atri was not invited to the event notwithstanding she was the other non-white permanent CLT member. Nevertheless, we do not uphold the Claimant’s complaints that she was discriminated against. Whilst we accept that a reasonable worker in the Claimant’s position could regard the Respondent’s failure to include them on the guest list as being to their detriment, in our judgment race was not a consideration when the guest list was put together. We are satisfied that Ms Rose’s proposed guest list was justified on non-discriminatory grounds, namely it comprised those who had lead the City Council and others who were reasonably believed to have made a material contribution in 2022 including, as Mr Gladstone identifies, three recipients of staff awards. As regards Mr Gladstone, he evidently gave the matter little thought at the time, even if he has taken the time to address the matter in some detail in his witness statement. Ultimately, there is no evidence from which we might infer that in endorsing the guest list - “perfect – pl share with Wayne to confirm” - he

was consciously or even sub-consciously excluding the Claimant on grounds of race or because she had done, or was believed to have done, protected acts.

367. Although we do not uphold the complaint, we observe that if inclusivity was fully embedded within the Respondent's culture and thinking, further thought might have been given to whether the guest list was fully reflective of the diverse workforce at Peterborough and the city it serves. There was a missed opportunity for the City Council to present itself at a gathering of its peers and others in a more representative way and to afford one or more individuals from potentially under-represented groups at Peterborough, an opportunity to network and raise their personal profile. We encourage the Respondent to reflect critically as to what inclusivity means at Peterborough.

Detriment 28

On 14 June 2023, by MG recommending that C's contract be terminated.

368. It seems to us that Mr Gladstone's recommendation that the Claimant's contract should be terminated was logically the only recommendation he could put forward in the circumstances. The Claimant has not really suggested otherwise. Once he had decided that she had not passed her probation and that an extension was unlikely to result in him making a different decision in terms of confirming her appointment, her continued employment was no longer tenable as far as he was concerned. Of course, given the Claimant's appointment as Monitoring Officer, any decision was ultimately not his to take, but sat instead with full Council. When he made his recommendation, his view of the situation was unchanged from 16 May 2023. Although the Claimant had submitted a formal grievance in the meantime, that fact alone does not constitute grounds from which we might infer that the reason why Mr Gladstone recommended her dismissal was that further protected act of hers or indeed any earlier protected act, or that it related to or was materially influenced by her race. There is no evidence of Mr Gladstone reacting adversely to the 20 May 2023 grievance or other evidence which might lead us to infer that it hardened his resolve and led to him making a recommendation he might not otherwise have made. We do not uphold the complaint.

Detriment 29

On 14 June 2023, by R not giving C the right of appeal against MG's decision recommending that her contract be terminated.

369. It is questionable whether the Claimant was subjected to detriment or unwanted conduct that had the proscribed effect referred to in s.26 of the Equality Act 2010, by not being afforded a formal right of appeal against Mr Gladstone's decision in circumstances where his recommendation would first be considered by an Independent Panel and, only if the

recommendation was supported, thereafter considered and voted upon by full Council. In our judgement, those two stages in the process were akin to a first and second stage appeal.

370. One of the themes of Ms Banton's cross examination and final oral submissions was that the Claimant should not be denied the same protections afforded to 'ordinary' employees. Whilst the comparison is a superficially attractive one, firstly, if anything, it relates more obviously to the question of whether the Claimant was treated unfairly which is not the primary focus of our enquiries, and, secondly and in any event, in our judgement the relevant question is how a hypothetical white statutory officer would have been treated in the same or not materially different circumstances. Given the unique statutory protections in place in relation to the Golden Triangle we do not think the answer to that question is meaningfully informed by evidence of how 'ordinary' employees were or might have been treated. In any event, we agree with Mr Dennis that the Respondent's Probationary Procedure affords all other employees outside the Golden Triangle a single right of appeal, or review, in respect of their manager's decision to terminate their employment during their probation period. In other words, the comparison does not support the Claimant's claim to have been disadvantaged or to have experienced unwanted conduct that had the proscribed effect. Moreover, on the basis that outside of the Golden Triangle the Respondent's black and minority ethnic employees are equally covered by the Probationary Procedure, any comparison with how the wider workforce are treated does not obviously support the complaint that the Respondent's approach in relation to the Claimant related to or was materially influenced by race. On the Claimant's case 'ordinary' black employees were treated more favourably than she was.
371. When one stands back and looks at the procedure from beginning to end, it took nearly three and a half months from the point at which Mr Gladstone decided that the Claimant had not passed her probation for full Council to sanction her dismissal. By the time the Claimant was dismissed, she had had a significant number of documented 1-2-1s with Mr Gladstone, had been coached and mentored, received constructive feedback through the Improvement Panel, had met with Mr Gladstone on three separate occasions to discuss her probation, had the benefit of a lengthy hearing before the Independent Panel and an extended hearing before full Council when her allotted speaking time had been increased from 10 to 50 minutes. She had also been afforded the opportunity by Mr Gladstone to provide a self-evaluation, which was supplemented with her written observations on the process, amongst other things, and she had also been able to submit detailed written statements to the Independent Panel and full Council, in each case supported by a volume of documents. In our judgement that all equates to and almost certainly exceeds anything that an 'ordinary' probationary employee might reasonably have expected.

372. There are no grounds for us to infer that in similar circumstances a white Monitoring Officer or Chief Finance Officer would have been offered a right of appeal against the Chief Executive's decision to recommend termination, over and above the prescribed constitutional arrangements. We do not uphold the complaint.

Detriments 30 and 31

On 16 June 2023, by MG prohibiting C from sending a letter to DF to protect C.

After 16 June 2023, by MG insisting that C continue to work on the DF matter.

373. The Claimant contends that she would not have been put in the position she was had she been white. She compares her treatment to Ms Booth and Employee B, though we are unclear why since, to our knowledge, threats were not made against either of them but allegedly handled differently. The only obvious potential comparator would be the individual in the Governance Team who was threatened with violence by DF. However, her concerns that not enough had been done to support her were directed at the Claimant rather than Mr Gladstone so do not support drawing adverse inferences against him.
374. Mr Gladstone requested that the Claimant take no further action on DF's matter on 16 June 2023 for the simple reason that he had been brought into the matter late in the day, in circumstances where, perhaps with the benefit of hindsight, he might have been briefed by the Claimant sooner in the matter. The weekend provided an opportunity for both of them to reflect on the issues ahead of the Claimant briefing Mr Gladstone at the earliest opportunity the following week. As Peterborough's Chief Executive, Mr Gladstone could not realistically ignore either the concerns that were being expressed from outside the organisation or from within, and regardless of the Claimant's views in the matter he could not dismiss out of hand any perceived reputational risks, particularly given the BBC had shown an interest. It was a complex, evolving situation. Mr Gladstone had been confronted with a range of conflicting views reasonably late on a Friday, as well as criticisms of the Claimant's handling of the case. The criticisms, which had come from more than one individual, were reason alone to require a detailed briefing from the Claimant. We think the Claimant showed some lack of reflection in expecting Mr Gladstone's immediate and unquestioning support for her proposed course of action in relation to DF. There are no grounds for us to infer that Mr Gladstone's desire to reflect and his instruction that she should not write to DF as planned, related to her race or was materially influenced by it or because she had done (or was believed to have done) protected acts.

375. As regards the complaint that Mr Gladstone insisted the Claimant continue to work on the DF matter, that suggests that Mr Gladstone was bringing unreasonable pressure to bear. In our judgement he was simply endeavouring to navigate the legal and practical reality that she could not abdicate her responsibilities as the Panel's Monitoring Officer by unilaterally withdrawing from the matter. Once a workaround solution was identified, which itself required the Claimant's input and agreement, she had no further involvement. Crucially, it seems to us, the letter issued in Mr Gladstone's name took the focus away from the Claimant and onto Mr Gladstone in the event DF remained dissatisfied. We do not think any reasonable worker in the Claimant's situation would regard themselves as having been disadvantaged by this pragmatic approach. But even if it could be said that the Claimant was subjected to detriment, there are no grounds for us to infer that Mr Gladstone's approach related to the Claimant's race or was materially influenced by her race or because she had done (or was believed to have done) protected acts. If the same or a similar situation arose involving a white employee he would have needed to work with them to identify a solution before they could withdraw.

Detriment 32

On 17 July 2023, by MG making the following false and prejudicial submissions to the Independent Panel about C:

- 32.1 [Not upheld];
 - 32.2 [Not upheld];
 - 32.3 [Not upheld];
 - 32.4 That he referenced a grievance brought against C which led to no disciplinary action against her;
 - 32.5 [Not upheld];and
 - 32.6 [Not upheld].
376. We have already said that the point Mr Gladstone was making in referring to Employee A's grievance was that the Claimant was unwilling to receive feedback in a constructive way and that working relationships within the Golden Triangle were impacted as a result. In our judgement that was an entirely proper observation for him to share with the Independent Panel. It went directly to the second point in his letter of 18 May 2023 in which he set out the reasons why he had concluded that the Claimant had not passed her probation period. There are no grounds for us to infer that the inclusion of this information within his submissions related to the Claimant's race or was materially influenced by it or because of any protected acts of hers. We do not uphold the complaint.

Detriment 33

On and after 19 July 2023 and after the OH Report, by MG asking C to lead on commercial entities work. The comparator is Simon Lewis.

377. The fact that the Claimant told Ms Pullen she was “happy to pause” her grievance about this matter (page 1618) and did not subsequently ask Ms Pullen to take the matter forward evidences to us that the Claimant accepted Ms Pullen’s explanation that Mr Gladstone was unaware of the recommendations in the occupational health report. The Claimant was CLT Lead for the commercial entities work. It was one of her key responsibilities. The reiteration of her responsibilities in this regard on 1 August 2023 had nothing whatever to do with her race or any protected acts of hers, and was in ignorance of the occupational health report recommendations. The complaint is not well founded.

Detriment 34

On 8 August 2023, by MG suspending C.

378. In our judgement, Mr Gladstone’s decision to suspend the Claimant sat comfortably within the band of reasonable responses. As the Respondent’s Monitoring Officer and its Director of Legal and Governance, the Claimant was expected to lead by example and to adhere to the highest standards of conduct for an employee at her level. That included respecting confidential information, maintaining trust and confidence, and not doing anything that might bring the City Council into disrepute. The Claimant asserts that the determination of what was confidential sat with her as Monitoring Officer. Mr Turner approaches the matter from a slightly different perspective:

“My view was and is that the Claimant, as a very senior officer, indeed one of the respondent’s three statutory officers would have had authority from the respondent’s perspective to share confidential information under her dedicated powers from the council/cabinet. Therefore she wouldn’t have breached the confidentiality of the respondent...”

(paragraph 14 of his witness statement)

In other words, Mr Turner’s primary contention is that the Claimant acted in pursuance of her authority as Monitoring Officer (which is not quite the same point the Claimant makes about decisions on confidentiality sitting with her). Putting aside that Mr Turner has stepped into the advocate’s arena, if the Claimant was, or was believed by Mr Gladstone to be, under an express instruction not to share the report, we do not think it can be said that the Claimant was at liberty to disregard that instruction because she was the Respondent’s Monitoring Officer. Likewise, we do not consider that the Claimant had carte blanche to share information and

documents with Mr Turner as she saw fit simply because he was mentoring her. The fact they have advanced arguments as to why she might have been empowered to do so suggests to us that they recognise that the Respondent had certain legitimate expectations around the RedQuadrant report, as well as a legitimate interest in maintaining a good relationship with the authors of the report.

379. As of 8 August 2023, Mr Gladstone understood the Claimant to have been told that she was not permitted to share the RedQuadrant report with any third party outside the City Council before the report had been approved by CLT. His views in the matter were reinforced by the Claimant's actions in securing HR approval for the draft report to be shared with Mr Brown ie, it evidenced to him that the Claimant understood it was a sensitive document. Following receipt of Mr Taylor's email on 8 August 2023, Mr Gladstone further understood that in sharing the draft report with Mr Turner and submitting his feedback for consideration by CLT, the Claimant had undermined the City Council's relationship with RedQuadrant and created the conditions for a potential legal dispute. Mr Taylor specifically asked that RedQuadrant should be afforded the opportunity to review and respond to the points made by Mr Turner, "so that CLT is in possession of full and accurate data in considering our work". Mr Gladstone had by then already removed the report as an agenda item for discussion at CLT later that day. However, the Claimant proceeded to forward a copy of the report and Mr Turner and Ms Omoregie's commentary to Mr Kalley and a number of senior councillors. Although she would have been unaware of Mr Taylor's concerns and request, she knew that Mr Gladstone felt the review was not ready to be presented to CLT. In which case, she must equally have understood that he would not have considered it ready to be shared with members. In the course of our findings, we have said that the Claimant forwarded the report and commentary in furtherance of her own interests.
380. Against this background, the question is whether Mr Gladstone had reasonable grounds to suspend the Claimant pending an investigation into alleged serious misconduct. Whilst we have not been provided with a copy of the Respondent's Disciplinary Procedure to be able to consider the circumstances in which a member of the Resppndent's workforce may be suspended, in our judgement, on the facts as they appeared to Mr Gladstone late afternoon on 8 August 2023, it was reasonable for him to conclude that the Claimant should be suspended. It was not a knee-jerk reaction on his part, nor was it a 'gotcha' moment as Ms Banton suggested to Mr Gladstone, namely that he seized upon the Claimant's actions as something he could use against her. On the face of the documents and information available to him on 8 August 2023, Mr Gladstone reasonably understood the Claimant to have shared sensitive confidential information without first seeking or obtaining consent in circumstances where she was seemingly aware of the need to do so. The Respondent's Disciplinary Policy includes a list of examples of behaviour which will ordinarily be considered to be gross misconduct, including serious acts of

insubordination, conduct likely to discredit the City Council or bring it into disrepute, breach of confidence or trust, and the disclosure of information which could be harmful to the City Council (pages 209 and 210). In suspending the Claimant, Mr Gladstone said that the Respondent needed to have trust and confidence in the Claimant, an uncontroversial proposition. He went on to say that suspension was considered necessary due to the potential risk to the City Council and its reputation, the damage to essential trust and confidence, and the fact that working relationships had broken down. The Claimant's actions earlier that afternoon in submitting the s. 5 report without affording Mr Gladstone a further opportunity to revert to her before the end of the day, and her actions an hour or so later in circulating the RedQuadrant report and commentary to Mr Kalley and others, illustrates all too clearly to us the extent to which the Claimant and Mr Gladstone's working relationship had by then broken down. By her actions, the Claimant was clearly signalling a lack of respect for Mr Gladstone, notwithstanding he was Peterborough's Chief Executive.

381. This does not, of course, mean that Mr Gladstone did not discriminate against the Claimant by suspending her, it simply means that this is not a case where there are grounds to draw adverse inferences from the Respondent's alleged unreasonable treatment of the Claimant. However, in our judgement, there is no other basis for us to infer that Mr Gladstone's decision to suspend the Claimant related to her race or any protected acts of hers. There is no evidence to suggest that a white Director of Legal and Governance would not also have been suspended in the same or similar circumstances. On the contrary, the fact that the conduct in question fell squarely within the ambit of the examples of gross misconduct in the Respondent's Disciplinary Policy evidences to us that Mr Gladstone would have moved to suspend regardless of the protected characteristics of the individual concerned. We certainly do not infer a discriminatory or victimising mindset from Mr Gladstone's comments to the Claimant and Ms Omoregie in early February 2023 (Detriment 3).

382. Although we have concluded that the Model Disciplinary Procedure was not applicable to the Claimant's employment, we note it says that suspension,

“... may be necessary if an allegation is such that if proven it would amount to gross misconduct. It may also be necessary in other cases if the continuing presence at work of the chief executive might compromise the investigation or impair the efficient exercise of the council's functions.”

383. If proven, the Claimant's conduct could have amounted to gross misconduct. Moreover, in the circumstances we have described, in particular given that working relationships within the Golden Triangle were breaking down, the Claimant's continued presence at work could have placed at risk the efficient exercise of the City Council's functions. Accordingly, had we been persuaded that the Model Disciplinary

Procedure applied to the Claimant or should have been used as a reference guide in relation to her, her suspension was consistent with the Procedure. It does not support the necessary adverse inference.

384. Ms Banton makes the point, as does the Claimant and Mr Turner, that the Respondent did not ask Mr Turner to delete or return any information held by him. The Respondent might well have taken steps in that direction, but in our view the damage was already done; the report had been disclosed and critiqued, and RedQuadrant had objected in the strongest terms to this. Deleting the report would not have undone this or enabled the councillors and others who had seen Mr Turner's commentary to put it out of their minds. We do not infer anything more from the Respondent's failure to contact Mr Turner.
385. As to whether Mr Gladstone was reacting to the Claimant's ongoing protected acts, the acts are not of themselves sufficient to support an adverse inference, there must be something more. There is no need for us to repeat what we have said already regarding the significance of the Claimant's first protected act in Mr Gladstone's mind. We have not upheld the Claimant's victimisations complaints in respect of Detriments 1 to 33. In other words, Mr Gladstone was not minded (consciously or otherwise) to retaliate against the Claimant over a period of approximately 9 months notwithstanding her various protected acts. That does not, of course, preclude the possibility that a tipping point was eventually reached when the Claimant's protected acts began to inform Mr Gladstone's thinking and actions in relation to her. However, in our judgement, there is nothing more to support that conclusion or inference. We do not uphold the complaint.

Detriment 35

On 14 August 2023, thirty minutes before the Independent Panel meeting, by Ms Pullen negatively briefing the whole panel (including the Chair) against C.

386. As we say, in the absence of Ms Banton's submissions on this and various other issues, we have focused our attention on the matters pursued in cross examination, specifically the suggestion that point 12 in the written briefing note amounted to "putting the boot in". We accept, on balance, that a reasonable worker could regard the inclusion of that information in any briefing as being to their detriment given that the allegations were then unproven. We reach that conclusion notwithstanding the Claimant herself subsequently volunteered further detail about the matter in her written representations to full Council. However, the fact the Claimant did so and, furthermore, submitted a statement from Mr Turner regarding her disclosure to him of the RedQuadrant report, reinforces our view that Ms Pullen included the information in her briefing to the Independent Panel so that it would have the complete picture if this aspect was brought up by the Claimant. We do not agree that Ms Pullen was 'putting the boot in' or seeking to prejudice the Claimant in the eyes of the Panel. Instead, we

accept that it was reasonable for Ms Pullen to include basic information about the matter. She was not offering any view or implying that the alleged misconduct, in respect of which no further details were provided, was proven or should weigh in the Panel's deliberations. There are no grounds to infer that the inclusion of this information related to the Claimant's race or was materially influenced by it or because of any protected acts, or perceived protected acts, of hers. We do not uphold the complaint.

Detriment 36

On 14 August 2023, by the Independent Panel accepted MG's recommendation that C be dismissed.

387. We are concerned with the reasons why the Independent Panel reached the conclusions that it did, specifically was one or more of the Panel materially influenced by the Claimant's race or by the fact that she had done, or was believed to have done, protected acts. Reynolds confirms that the motives, biases and victimising mindset of others are not to be imputed to the Panel. Mr Dennis rightly points out that it was not put to Mr Osbourn that he was himself influenced by considerations of race or any protected acts of the Claimant. Nor was it put to him that the other two Panel members might have been so influenced. Ms Banton's written submissions do not identify any grounds on which we might infer that the Panel discriminated against the Claimant (including by victimising her). There is a significant weight of evidence that the Panel came to an informed, independent decision in the matter, delaying its decision until it had received the hearing minutes, so that it could refer back to them in coming to a decision. The time invested by the Panel and its criticism of aspects of the process, and implicit criticism of Mr Gladstone, reinforce our view that it gave the matter anxious consideration rather than being dismissive of the concerns of a senior black Director who had done protected acts. We do not uphold the complaint.

Detriment 38

On 31 August 2023, by the Respondent, by a vote in full Council: (i) wrongly deciding to dismiss C; (ii) rubber stamping the recommendation of MG to that end; and (iii) failing to consider the race grievance before reaching that decision.

388. As Mr Dennis says, the complaint would seem to be directed at each of the 43 councillors who voted in favour of the Claimant's dismissal. It is a moot point whether it is sufficient that just one or even a handful of councillors were materially influenced by the Claimant's race and / or protected acts in order for the decision to be sufficiently tainted that her complaint should succeed, or whether instead a majority of those who voted in support of the motion would need to be found to have been materially influenced by them before the decision might be impugned. Ms

Banton has not addressed the issue. We are inclined to agree with Mr Dennis' submission in this regard. In which case, it would be disproportionate to expect the Respondent to have secured statements from all or a majority of the councillors who voted in favour of the motion. In any event, it is of course the Claimant's burden to establish the primary facts from which discrimination (including victimisation) can be inferred.

389. The suggestion that full Council wrongly decided to dismiss the Claimant was not explored with Cllr Fitzgerald. It implies that all those councillors who supported the motion, or at least a majority of them, reached a perverse conclusion against the weight of evidence. Whilst there is no wrongful dismissal complaint before the Tribunal, if Mr Gladstone genuinely believed that the Claimant had failed her probation period and, as we accept, had reasonable grounds for so concluding, and thereafter the Independent Panel reasonably came to the same conclusion, it seems inherently unlikely had the decision itself been explored in detail with Cllr Fitzgerald that we would have concluded that full Council got the matter fundamentally wrong and reached a perverse conclusion when it endorsed Mr Gladstone's recommendation and the Panel's conclusions. But, as we say, Ms Banton did not explore this with Cllr Fitzgerald, nor indeed why full Council's decision was unreasonable, in the sense of sitting outside the band of reasonable responses. In so far as any assertion of unfairness might be grounded in the alleged rubber stamping of Mr Gladstone's recommendation, we have not upheld that allegation in our findings.
390. As with Mr Osbourn and as we have noted in our findings, Ms Banton did not put to Cllr Fitzgerald that he was himself materially influenced by considerations of race or the Claimant's protected acts, or that any other councillors were so influenced. The Claimant's case again is that Mr Gladstone was the de facto decision maker ("NG is operative and heavily influencing at every stage of the process" – paragraph 47 of Ms Banton's written submissions). We are clear that he was not, even if he made a recommendation that the Claimant should be dismissed for failing her probation. In any event, for the reasons we have already set out, any alleged discretionary motive of his is not to be imputed to the 43 councillors, or a majority of them, who carried the motion to dismiss. We have not, of course, upheld the Claimant's complaints that Mr Gladstone discriminated against her when he decided that she had not passed her probation period or in recommending to the Independent Panel and full Council that she should be dismissed. In which case, had the principles in Jhuti applied by extension, as Ms Banton contends, it would still be to no avail.
391. As regards the Claimant's further complaint that full Council failed to consider the race grievance before reaching its decision, in our judgement this essentially goes to whether it acted unfairly rather than it supporting an inference of discrimination. In the context of disciplinary proceedings, paragraph 46 of the ACAS Code envisages that where an employee raises a grievance during the disciplinary process, the disciplinary process may

be temporarily suspended in order to deal with the grievance. Whilst the Claimant was not the subject of a disciplinary process the situation is obviously analogous. We appreciate that had the Claimant's grievance been upheld that might have weighed in the councillors' deliberations and approach. Nevertheless, if the approach could be criticised as unreasonable (the Code only suggests that the process *may* be suspended, not that it *should* be), the explanation seems to be that Cllr Coles, who moved the recommendation, stated that it was not full Council's role to consider any discrimination or victimisation complaints, rather solely to reach a judgement on the recommendations emanating from the Chief Executive and the Independent Panel. This was consistent with the Respondent's constitution which governs how full Council conducts its meetings and affairs. Cllr Fitzgerald's evidence was that it appeared to him that the Claimant was lacking in her job and not doing very well and that he was concerned that she seemingly did not enjoy good relationships with the rest of the team. He and his fellow councillors knew that the grievance was the subject of an ongoing independent investigation, so they were not sweeping the matter under the carpet. We do not uphold the complaint.

Detriment 39

On 31 August 2023, by the Respondent, by a vote in full Council., retrospectively ratifying the appointment of the Independent Panel.

392. We think the parties' evidence and submissions have focused unduly on constitutional and procedural issues which do not necessarily answer the question of the reason why full Council voted to retrospectively ratify Messrs Osbourn, Webster and Sofianos' appointment to the Independent Panel.
393. In the conduct of its meetings and business, full Council relies upon advice and guidance from Ms Edwards' teams to ensure they act at all times in accordance with the law, any relevant codes and guidance, and Peterborough's constitution. For the reasons set out above, if this advice and guidance were to be tainted with discrimination, that would not be imputed to the councillors, whose motives and mindset have to be considered.
394. Ms Banton describes the retrospective ratification of the Independent Panel members as a substantial red flag, without really explaining why. Cllr Fitzgerald regarded it as no more than a technical procedural issue, which is further indicated by the fact that the motion was unanimously passed by full Council seemingly without any questions or concerns having been raised. In our judgement, the answer to why full Council voted to ratify the three appointments is not to be found in consideration of which of two Leading Counsel may have been correct in their apparently conflicting advice as to whether the Independent Panel was lawfully constituted. We certainly do not think the Claimant's bare assertion at

paragraph 453 of her witness statement that advice received by the Respondent from Leading Counsel was “erroneous” and “wrong”, on the strength she says of an allegedly partial briefing (which she does not say she had sight of), takes her complaint any further. On this issue, we agree with Mr Dennis’ analysis and submissions at paragraphs 428 to 431 of his written submissions, though we are not with him when he submits that the ratification of the appointments did not constitute a detriment. Although potentially conflicted in the matter, it was the Claimant’s professional view that the appointments were invalid and accordingly that she was the subject of an unlawful process, a conclusion that had apparently been supported by separate Leading Counsel, even if he was instructed in the matter by the Claimant at a time when there is at least an issue as to whether she should have recused herself. Regardless of any potential conflict of interest (we are aware of arguments put forward by the Claimant to full Council that a Monitoring Officer may issue a s. 5 report in relation to a matter in respect of which they have some personal interest), we do not think it can be said that no reasonable worker in the Claimant’s position would have thought themselves disadvantaged by full Council’s ratification of the appointments, even if other Leading Counsel gave conflicting advice.

395. Even were Ms Banton to have persuaded us as to her analysis and accordingly that there was something irregular in the Independent Panel’s constitution, given the divergent legal views in the matter, which of course persist to this day, we cannot say that full Council acted unreasonably, that is to say outside the band of reasonable responses, when they accepted Mr Gladstone’s recommendation (to which Ms Edwards and/or her team had significantly contributed and on which Leading Council had advised) that the Panel appointments should be ratified solely “for the avoidance of doubt” in light of the Claimant’s actions in issuing a s. 5 report questioning the validity of the appointments. There are no grounds to infer that the councillors or any of them would not have backed the relevant motion had the Claimant been white or had she not done protected acts. As we have noted already it was not put to Cllr Fitzgerald that he had voted to ratify the appointments for an impermissible reason. As he said in his evidence, and we accept,

“I felt this was a bit of a technicality”.

396. As for the submission that the Respondent’s witnesses sought to hide behind legal advice on this issue without waiving privilege, the complaint does not sit particularly well in the mouth of an experienced solicitor who has herself had the benefit of confidential legal advice throughout these proceedings.

Detriments 40 and 41

On 31 August 2023, by R / MG sending an all staff email informing them that C was dismissed for not passing her probation.

On or before 6 September 2023, by R / MG / Ms Amanda Rose negatively briefing the Cambridge News and Peterborough Telegraph against C, which resulted in the negative media coverage of C on 6 September 2023.

397. We accept that the Claimant considers the statements that were issued to staff and in response to media enquiries and reporting were to her detriment and that she did not want them to be made. In our judgement it cannot be said that no reasonable worker in the Claimant's situation would have regarded the statements as having been to their detriment. Even if there had already been reports in the media regarding her proposed dismissal, which in any event were very unlikely to have come to the attention of Peterborough's entire workforce, the all staff email was formal confirmation that the Claimant had been dismissed for failing her probation period. Those staff who read the email would likely assume, as a minimum, that this was because the Claimant had failed to meet the requirements of the role. Although, as we have noted already in our findings, the media statement might have served to correct previous inaccurate reports that the Claimant had been the subject of disciplinary proceedings, that of course assumes that anyone who read any articles or reports would understand the difference between a probation and disciplinary process. Again, as a minimum, anyone who read the Respondent's statement in any media article would understand that the Claimant had failed to meet the requirements of the role.
398. In our judgement, if the Respondent's actions in issuing the statements were unwanted, they did not relate to the Claimant's race, they related to the particular, unusual circumstances of her departure, including the contested process by which she had been removed, which had been reported in the media as potentially illegitimately constituted and unlawful. In our judgement, the Respondent had a legitimate interest and non-discriminatory reason for issuing a limited factual statement which confirmed the Claimant's departure, including the reasons for her departure, and which also placed on record that, in the Respondent's view, due process had been followed, something that would be of particular importance to its staff and a matter of wider public interest (as the original media reports attest to). In our judgement, the Respondent put forward its side of the story in a measured, limited way. The fact the Respondent could not prevent speculation or some potential level of misunderstanding amongst those who might have read any media articles does not in our judgement mean that it did not have a legitimate interest in publication. We are satisfied that the same statements would have been issued had a white Director of Legal and Governance (Monitoring Officer) been terminated at the conclusion of their probation period in circumstances where there was inaccurate media reporting regarding their exit. We do not uphold the complaints.

Detriments 42 and 43

By R unreasonably delaying and not providing any outcome to C's grievance of 2 August 2023.

Between 29 August 2023 and 24 October 2023, R ignored C's grievance of 29 August 2023.

399. Ms Pullen did not delay in responding to the Claimant's email of 2 August 2023, she acknowledged it the same day. The grievance was not taken forward as Ms Pullen reasonably understood the Claimant to have accepted what she had said in her email about Mr Gladstone having no knowledge of the recommendations in the occupational health report. That did not relate in any way to the Claimant's race nor was it materially influenced by her race or any protected acts, or perceived protected acts, of hers.
400. Ms Pullen did not ignore the Claimant's 29 August 2023 grievance and Mr Gladstone had no involvement in it. As for Ms Spendelow, she was not asked about the 29 August 2023 grievance at Tribunal. We have referred already to the decision of Elias J in Jesudason v Alder Hey Children's NHS Foundation Trust [2020] ICR 1226, including the observations at paragraph 93 of the judgment.
401. We accept Ms Spendelow's unchallenged explanation that the grievance stalled for a few weeks due to Mr Chapman's holiday and, following his return from leave, because the grievance was then overlooked. Likewise, her explanation that the grievance was then not taken forward because the Claimant said she would not attend any meeting to discuss the grievance, and leave it instead to be considered by a Tribunal. There is no basis for us to infer that Ms Spendelow's actions related to race or were materially influenced by race or any protected acts, not least in circumstances where a positive case was not put to her in cross examination and is not articulated in Ms Banton's submissions. We do not uphold the complaint.
402. We intend to list the case for a remedy hearing and will issue case management orders in respect of that hearing separately.

Approved by:

Employment Judge Tynan

Date: 16 October 2025

Sent to the parties on: 17/10/2025

For the Tribunal Office.

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