EMPLOYMENT TRIBUNALS

Claimant: Amy Reeves

Respondent: Kier Ltd

Heard: in Sheffield on 13, 14, 15, 18 and 19 May 2026

Before: Employment Judge Ayre
Ms Y Fisher (by CVP)
Ms P Pepper

Representation

Claimant: Represented herself
Respondent: Phoebe Mather, counsel

JUDGMENT

The unanimous decision of the Employment Tribunal is:

1. The claim for harassment related to race is not well founded. It fails and is dismissed.

2. The claim for victimisation is not well founded. It fails and is dismissed.

3. The claim for direct race discrimination is not well founded. It fails and is dismissed.

REASONS

Background

1. The claimant was employed by the respondent as a Commercial Administrator from 18 November 2024 until 3 July 2025 when she resigned with immediate effect.

2. The claim form was presented on 14 July 2025 following a period of ACAS early conciliation that started on 22 May 2025 and ended on 3 July 2025.

3. A Preliminary Hearing took place on 29 October 2025. At that hearing it was clarified that the claimant Is bringing complaints of harassment related to race, victimisation and direct race discrimination.

The hearing

4. At the start of the hearing the claimant asked again if a screen could be placed between her and the respondent's witnesses, in particular Mr Pell. She told the Tribunal that it would make it easier for her during the hearing if she could not see Mr Pell. The Tribunal agreed to try and put a screen in place if it were possible to do so.

5. During an adjournment the Tribunal endeavoured to put a screen in place. The desks in the hearing room could not be moved because they were attached to the floor, and there was no way of placing a screen to prevent the claimant from seeing Mr Pell when he was giving evidence. As an alternative solution, the claimant and the respondent swapped desks, so that the claimant was sitting as far away from the witness table as possible. It was also agreed that Mr Pell would sit right at the back of the room when not giving evidence. The claimant was informed that she could ask for a break at any time. The claimant entered and left the hearing room at the same time as Ms Mather. The respondent's witnesses and observers entered the hearing room after the claimant and left before her.

6. At the start of the hearing the Employment Judge explained to the claimant the process that would be followed during the hearing, including that she would have the opportunity to put questions to the respondent's witnesses and should prepare some questions, if she had not already done so. The claimant gave evidence first and we concluded her evidence at lunch time on the second day of the hearing. After lunch we began to hear evidence from the respondent's witnesses. The claimant said she had prepared some but not all of the questions for the respondent's evidence. As a result, the Tribunal hearing had to finish early on the second day.

7. When giving her evidence to the Tribunal the claimant asked to bring a blank note pad and pen to the witness table, so that she could take notes. She was given permission to do so and had a note pad and pen with her on the witness stand during her evidence.

8. There was an agreed bundle of documents running to 515 pages. At the start of the second day of the hearing the claimant sought to introduce two additional documents, namely copies of her messages to the Crisis team, and the index to her disclosure documents. The respondent did not object to the admission into evidence of these documents and they were admitted by consent.

9. The Tribunal heard evidence from the claimant and, on behalf of the respondent, from:

1. Wayne Bramley, Operations Manager;

2. Kieran Pell, Quantity Surveyor; and

3. Daveen Cleworth, HR Business Partner.

10. The claimant gave her evidence on the afternoon of the first day of the hearing and the morning of the second day. At the start of day three, as we were part way through the respondent's evidence, she told the Tribunal that she wanted to put additional questions to Wayne Bramley because she had forgotten to ask him about a particular issue. She also said that she wanted to clarify some of the evidence that she had given.

11. Mr Bramley was no longer present in the hearing and the respondent objected to the claimant returning to the stand to give additional evidence. It was the unanimous decision of the Tribunal that Mr Bramley would not be recalled as it would not be proportionate to delay the hearing to enable him to return. The Tribunal also decided that the claimant would not be permitted to give additional evidence but would be permitted to make submissions on the issue she wanted to give additional evidence on.

12. Both part

The issues

13. The issues that fell to be decided in the case were identified at the Preliminary Hearing and confirmed at the start of the hearing as being the following:

Time limits

14. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before **23 February 2025** may not have been brought in time.

15. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? In particular:

    1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
    2. If not, was there conduct extending over a period?
    3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
    4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
        i. Why were the complaints not made to the Tribunal in time?
        ii. In any event, is it just and equitable in all the circumstances to extend time?

Direct race discrimination

16. The claimant describes her race as mixed race British and Jamaican. She compares herself with a hypothetical white British comparator.

17. Did the respondent do the following things:

    1. On 6 March 2025 during a Teams meeting about organising an Eid event, did Wayne Pashley say that the claimant was not a member of the team? Did Jenny Villairs say that having a conversation with the claimant about changing the date for the Eid event was not for the claimant to do, even though she had asked her to do it? Did Wayne or Jenny tell her to stay out of organising the Eid event? Did they use raised, aggressive voices? Did the claimant send a direct message to Kieren Pell saying that she had been "*thrown under a bus*" by her colleagues? Did he agree that it looked like that but do nothing to intervene?

    2. In March or April 2025 when working in an office near the claimant, did Laura Edgar and Jenny Villairs on one occasion start whispering when a contractor asked about the claimant? On another occasion were they talking normally and then start whispering?

    3. On 10 April 2025, following the Eid event (which had happened whilst the claimant was on annual leave) were picture of the event put on the communal fridge? Was everyone else included but not the claimant? Did the respondent not print the claimant's photo off and put it in the group, even though that had been done previously?

    4. On 30 April 2025 after the claimant shared a light-hearted photo in the team group chat showing her working from home in her garden, did Kieren Pell tell the claimant that the site team might not like it and that it gave the wrong impression, rather than taking it in the light-hearted way it was intended? Were other colleagues who had posted similar photos treated differently, and was the claimant treated differently when she posted a similar photo to a different project group chat on the same day?

18. Was that less favourable treatment?

    The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between her circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

    The claimant did not name any one who she says was treated worse than she was and relied upon a hypothetical comparator.

19. If so, was it because of race?

Harassment related to race

20. Did the respondent do the following things:

    i. On 18 November 2024 did Laura Edgar describe a tenant as a "*little old black lady*"?

    ii. On 19 November 2024 did Kieran Pell laugh at a Helpdesk employee's name, saying "*WTF are these names*" and mock non-English names?

    iii. On 30 January 2025 did Wayne Pashley mock the name Prince Acheampong in a team meeting, saying "*what kind of name is that?*"

    iv. In early March 2025 did Wayne Pashley refer to "*two coloured ladies outside*" and was he visibly startled when he saw the claimant nearby?

    v. On 21 May 2025 did Chloe Saunders delete some tasks from the claimant's OneNote? When the claimant messages to ask about it, did Ms Saunders say words to the effect of "*Amy, please don't take that tone with me. All tasks assigned to you are now back under my control*"? The claimant says that was a complete change in tone from Ms Saunders towards the claimant.

21. If so, was that unwanted conduct?

22. Did it relate to race?

23. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

24. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

Victimisation

25. Did the claimant do a protected act as follows:

    1. On 4 March 2025 did the claimant report to Wayne Bramley (Operations Manager) that colleagues had used the language referred to above and that management had failed to intervene? Did she say that this was creating a hostile and unsafe working environment and affecting her wellbeing?

The respondent does not admit that the report to Wayne Bramley was a protected act.

2. On 1 May 2025 did the claimant raise a formal grievance with Emma Codd (Head of HR Places) and Daveen Cleeworth in HR? The claimant says that the grievance alleged systemic race discrimination and exclusion and complained that the respondent had failed to act in response to her report to Mr Bramley and that this was creating an unsafe environment for her.

   The respondent admits that the raising of the grievance was a protected act.

26. Did the respondent do the following things:

1. On 6 March 2025 during a Teams meeting about organising an Eid event, did Wayne Pashley say that the claimant was not a member of the team? Did Jenny Villairs say that having a conversation with the claimant about changing the date for the Eid event was not for the claimant to do, even though she had asked her to do it? Did Wayne or Jenny tell her to stay out of organising the Eid event? Did they use raised, aggressive voices? Did the claimant send a direct message to Kieren Pell saying that she had been "*thrown under a bus*" by her colleagues? Did he agree that it looked like that but do nothing to intervene?

2. In March or April 2025 when working in an office near the claimant, did Laura Edgar and Jenny Villairs on one occasion start whispering when a contractor asked about the claimant? On another occasion were they talking normally and then start whispering?

3. On 10 April 2025, following the Eid event (which had happened whilst the claimant was on annual leave) were pictures of the event put on the communal fridge? Was everyone else included but not the claimant? Did the respondent not print the claimant's photo off and put it in the group, even though that had been done previously?

4. On 30 April 2025 after the claimant shared a light-hearted photo in the team group chat showing her working from home in her garden, did Kieren Pell tell the claimant that the site team might not like it and that it gave the wrong impression, rather than taking it in the light-hearted way it was intended? Were other colleagues who had posted similar photos treated differently, and was the claimant treated differently when she posted a similar photo to a different project group chat on the same day?

5. On 21 May 2025 did Chloe Saunders delete some tasks from the claimant's OneNote? When the claimant messaged to ask about it, did Ms Saunders say words to the effect of "*Amy, please don't take that tone with me. All tasks assigned to you are not back under my control*"? Was that a complete change in tone from Ms Saunders towards the claimant?

6. Between May and June 2025 did the respondent's HR team (Daveen Cleeworth, Ben Summers, Sophie Eastal and James Walters) fail to meaningfully communicate with the claimant or update her for several weeks after she submitted her formal grievance?

7. On 20 June 2025 did the respondent's HR team unilaterally change the claimant's contract end date from 31 August 2025 to 30 June 2025?

8. Between May and July 2025, did the respondent's HR team (Emma Codd, Daveen Cleeworth, Ben Summers, Sophie Eastal and James Walters) fail to properly investigation the claimant's grievance?

27. If some or all of the above things happened, did they amount, singly or cumulatively, to a fundamental breach of contract?

28. If so, did the claimant resign in response without affirming the contract?

29. If so, was it because the claimant did a protected act?

Direct race discrimination

30. Did the respondent do the things set out at paragraphs 25(1) to (4) above?

31. If so, was that less favourable treatment? Was the claimant treated worse than someone else was treated?

32. If so, was it because of race?

Remedy

33. In light of the Tribunal's conclusions on the substantive issues, it has not been necessary for us to consider remedy.

Findings of Fact

34. The following findings of fact are made on a unanimous basis.

Background

35. The respondent is an infrastructure services, construction and property company. In October 2024 the claimant was offered a role with the respondent as Commercial Administrator on a salary of £28,000 per annum. She was provided with a written statement of terms and conditions of employment which stated that her contract was for a fixed term of one year, and due to terminate in November 2025.

36. The claimant's employment as Commercial Administrator began on 18 November 2024. She was based at premises in Thorncliffe Park in Sheffield although she also worked from home. The claimant reported initially to Adam Storer,

although Kieran Pell managed her on a day to day basis and became her formal line manager in January or February 2025. She was assigned to work on a project involving a large residential block of flats known as Castle Court which was led by Wayne Pashley, Project Manager, and Kieran Pell, Commercial Manager.

37. Shortly after joining the respondent, the claimant applied for a role on the respondent's graduate scheme. Her application was successful and she was offered a place on the scheme starting in September 2025. On 18 December 2024 Wayne Bramley wrote to the claimant congratulating her on her promotion and offering her the role of Graduate Project Manager. Attached to the offer was a new contract of employment to start on 1 September 2025. The salary set out in the offer letter was £29,250 per annum. The intention was that the claimant would work as a Commercial Administrator until the end of August 2025 and then on 1 September become a Graduate Project Manager on an indefinite contract.

38. The respondent has an Employee Handbook which includes a section on fairness and inclusion and an Equality, Diversity and Inclusion policy. It requires all staff to undergo mandatory training each year, including in equality, diversity and inclusion.

39. The respondent also has a Managing Sickness Absence policy which contains the following relevant provisions:

"***Keeping in touch***

If you are absent you should expect to be contacted from time to time by your line manager to discuss your well-being, expected length of continued absence from work and any work that needs to be covered during your absence. Where appropriate, and in consultation with you, your line manager and/or occupational health practitioner and/or a member of the HR team may arrange to visit you at an agreed location….

Occupational sick pay ("OSP")

If you are entitled to OSP under your contract of employment, payment is subject to your line manager receiving satisfactory evidence that you are sick and that the correct processes and procedures have been followed. Payment of OSP is inclusive of your statutory sick pay entitlement…."

40. The claimant's contract of employment provided that from completion of her probationary period up to one year's service, the claimant was entitled to 22 days full pay by way of sick pay, and 22 days half pay.

41. The claimant describes her race as mixed race, English and Jamaican.

<u>18 November incident involving Laura Edgar</u>

42. The claimant alleged that on the first day of her employment, a colleague, Laura Edgar, described a tenant as a "*little old black lady*". In her witness statement the

claimant said that she found this comment inappropriate and uncomfortable and that no other residents were described by reference to their race.

43. The respondent accepted in its evidence that the words had been used by Laura Edgar. Mr Pell said that they had been used in a descriptive way to identify a tenant to a colleague who did not know the tenant by name.

44. We find that the comment was made by Laura Edgar, during a conversation with a colleague which was not directed at or involving the claimant. We also find that Ms Edgar used the word to describe a tenant, once it became apparent that the colleague did not know who the tenant was when Ms Edgar told him the tenant's name. There was no evidence before us to suggest that Ms Edgar directed the comment at the claimant or made it with the purpose of humiliating the claimant. Rather, she used it to describe the tenant, in the same way as she used other descriptors, namely old, little and lady.

45. On 20 November the claimant sent a number of text messages which were before us in evidence. The recipient of the text messages was redacted in the bundle, and the claimant did not tell the respondent or the Tribunal who the text messages were sent to. In the messages the claimant wrote:

"*There were some discriminatory comments in the office yesterday that bothered me and I'm not really sure how to approach it, I'm not upset as I think people just need to be educated better (it's a 100% white British office). Not really sure how to address the issue as a new starter, any advice? It's how they where describing people who live in the flats to identify them…*"

46. The recipient of the messages suggested speaking up or mentioning it to her line manager, to which the claimant replied:

"*Ok il try the first option, and it was my line manager who made one of the comments he was laughing at peoples last names and ridiculing them because they were not typical English names.*"

47. We find that the words "*little old black lady"* were used by Laura Edgar as a means of identifying a tenant. We also find that the words were unwanted by the claimant, because she took the step of messaging someone who she trusted for advice shortly after they were said.

<u>19 November incident involving Kieran Pell</u>

48. The claimant alleged that on the second day of her employment, Kieran Pell laughed at a Helpdesk employee's name, saying "*WTF are these names*" and mocking non-English names.

49. The claimant said in her evidence that Mr Pell was helping her with IT access issues and the two of them were in contact with a Help Desk employee called Kaylan Chebrolu. She said that Mr Pell had laughed and said words to the effect of "*what the fuck are these names*" and that she found this deeply uncomfortable and

upsetting as she understood him to be mocking a non-English name. There was also, in the bundle, a record of a Teams chat between the claimant and a Mr Chebrolu on 19 November.

50. Mr Pell's evidence to the Tribunal was that he had no recollection of making such comments and that there was no reason for him to be involved in a conversation between the claimant and IT on that particular issue.

51. On balance we prefer the evidence of Mr Pell and find that the alleged comment was not made. We accept Mr Pell's evidence that there was no need for him to be involved in a conversation between the claimant and IT. The claimant and Mr Pell were working in a professional working environment in an office, in a diverse location. The comment is an offensive one for a manager to make to a new employee who is mixed race.

52. The claimant mentioned alleged comments by her line manager in a text message she sent on 20 November. That is not, in our view, conclusive evidence that the comment was made by Mr Pell. Rather, we find it more likely that the claimant misinterpreted a reference to a name. There were several events that occurred which the claimant interpreted in a way which many people would not have interpreted. For example, genuine attempts by HR to support her during her sickness absence were interpreted by the claimant as harassment. It is in our view more likely that, rather than Mr Pell laughing at an individual's name, the claimant interpreted a comment about someone's name as that person laughing at the name.

53. It is, in our view, telling, that the claimant did not raise any complaints about the alleged behaviour of Mr Pell and Ms Edgar until many months after the alleged incident occurred. Moreover, it is clear that the claimant was, until May 2025, largely happy at work. In December 2024 she applied for and was offered a permanent role with the respondent.

54. On 28 January 2025 the claimant sent a message to Adam Storer in which she wrote "*Thanks again for bringing me into Kier – I found myself smiling on the train that I love my job and the company! I feel very lucky and honoured to be here!*" Mr Storer replied, "*You're welcome Amy. It's great to have you! From what I hear, doing a great job for us, fitting into the team well and have the great opportunity starting in September too, so staying with us beyond 12 months…*"

55. On 11 February 2025 the claimant sent a message to Kieran Pell in which she wrote "*it's nice not to be in a toxic work environment*". Two days later, she sent another message to Mr Pell "*I'm really enjoying Kiers no discrimination policy, I think this is the first time I've actually felt liberated in a job*".

56. The evidence before the Tribunal also indicated that the claimant was well thought of by managers within the business. On 11 June 2025 , when asked by James Walters what he saw the claimant's next 12 months looking like, Mr Pell replied "*…From October she's working for WB, so querying if Kier can pull that forward and not working in Castle Court, or in administration role*". On the same day Wayne Pashley, in his grievance interview, said that he could not see anything other

than that the claimant was a liked member of the team. Wayne Bramley, in his interview, described the claimant as a "*Very bubbly, buoyant, confident young woman. Good qualifications.*" When asked what her next 12 months looked like he replied that he had lots of experience and thought he could offer a really well grounded training programme and wanted to give her a good spread of sites and across different people.

30 January 2025 incident

57. The claimant alleged that on 30 January 2025 Wayne Pashley mocked the name Prince Acheampong in a team meeting, saying "*what kind of name is that*"? In her witness statement the claimant said that Prince Acheampong was a new starter with the business who had been introduced by Wayne Bramley during a Teams meeting. She also said that during the meeting Wayne Pashley laughed and said words to the effect of "*Prince Acheampong? What kind of name is that*?" In her grievance she said it had been made in the site office whilst the team was sat around a table together.

58. Kieran Pell gave evidence that he had no recollection of Wayne Pashley using those words. Wayne Pashley was asked about the incident during the respondent's investigation of the claimant's grievance. When asked if he remembered making the comment he said, "*no idea*" and that he had only met Prince Acheampong recently. He also said that the claimant did not raise this with him, and that he would have expected her to do so because she was, in his words, a 'forthcoming individual'.

59. Questions were put to the claimant about this incident during the respondent's investigation into the claimant's grievance, but the claimant did not respond.

60. On 31 January the claimant posted on the respondent's Racial Inclusion network site on the intranet, that she was "*hoping to reach some racially diverse people in Kier Places North as I seem to be the only one and I feel a bit isolated! Maybe not isolated, more like imposter syndrome".* Emma Codd, the Head of HR for Kier Places, responded to the claimant saying that she may be able to connect the claimant with the wider team. There was no evidence before the Tribunal to suggest that Ms Codd ever followed up on her offer to connect the claimant.

61. We find on balance that it is less likely that the comment was made by Mr Pashley than that it was made. It is inherently unlikely that a manager would laugh at the name of a new starter in front of more junior colleagues and we note that, when asked about it during the grievance investigation, Mr Pashley had no recollection of it. We therefore find on the balance of probabilities that the comment was not made.

62. The claimant suggested in her evidence that others were present when the comment was made. She did not however identify who was present, and when asked about this during the grievance investigation, chose not to answer the questions.

Performance review

63. During the first few weeks of her employment, the claimant appeared reluctant to carry out some of the more routine tasks of a Commercial Administrator and openly expressed negative views about that type of work, describing it as boring or pointless. This did not go down well with her colleagues, some of whom initially formed a negative view of her. Over time however the claimant's relationship with her colleagues improved and in some cases developed into friendship. The claimant became a valued member of the team.

64. In February 2025 Kieran Pell carried out a performance review meeting with the claimant. During the review Mr Pell explained to the claimant that when she first foined the team, some of her colleagues had not taken to her, due to her attitude and approach to work. The claimant suggested that Mr Pell told her that other people 'hated' her. Mr Pell denied using those words. On balance we prefer the evidence of Mr Pell and find that those words were not used. 'Hate' is a very strong word to use and one which it is unlikely that a manager would use. Mr Pell had no reason to tell the claimant that people hated her.

65. It is clear from Mr Pell's evidence, and from comments made by Mr Pell during the grievance investigation interview, that on the whole he rated the claimant's work and wanted her to stay with the organisation. We find that, during the performance review meeting he did refer to the initial tensions in the team as a result of the claimant's attitude at the start of her employment but went on to say that the team's view of her had become more positive, and that she was performing well.

Early March 2025 incident involving Wayne Pashley

66. The claimant alleged that in early March 2025 Wayne Pashley referred to "*two coloured ladies outside*" and was visibly startled when he saw the claimant nearby.

67. In her witness statement the claimant said that whilst she was seated in the back office, Wayne Pashley walked into the front office and said words to the effect of "*there's two coloured ladies standing outside*" and then appeared startled on seeing her at her desk. She said that she found this language offensive and upsetting.

68. When asked about this incident during a grievance investigation interview on 20 August 2025 Mr Pashley said that had no recollection of the incident. He also said that if it had been significant the claimant would have picked him up on it at the time and it would have been dealt with. When asked if that sounded like the kind of thing he would say he replied "*no, they're working on one of the most culturally diverse buildings in the city and they adhere to 5 Respect Basics*" and that he is "*aware of what the right language is and he doesn't believe he would say that*".

69. We find on balance that the comment was made. We note that the claimant specifically referred to it in the message she sent to Mr Bramley on 4 March. We do not however accept that Mr Pashley looked startled. The claimant did not refer to him looking startled when she reported the event to Mr Bramley. There is insufficient evidence before the Tribunal for us to conclude that he was visibly startled.

Interaction with Wayne Bramley in March 2025

70. On 4 March 2025 the claimant sent a message to Wayne Bramley in which she wrote "*you stand up for racial discrimination, which is something I'm struggling with at castle court, and I'm not sure how to address it. Site staff have said "two coloured ladies" "old black ladies" and quite frequently laugh at non English last names. It's making me really uncomfortable and out of place, I'm wondering if you could address these issues? Let me know your thoughts*".

71. Wayne Bramley replied to the claimant on 13 March, apologising for the delay and explaining he had just seen the claimant's message. He said he would give her a call later to discuss and sort things. The claimant sent a message back in which she wrote "*OK, though we've just settled some tension in the office so not sure I want to start it back up again, but we can chat about it, il be free after 11 am*".

72. The claimant and Mr Bramley spoke about the claimant's message. During the conversation, the claimant told Mr Bramley that she had two main issues with the site team: the reference to 'two black ladies' and the mispronunciation of names accompanied by laughter. She said that, whilst a lot of black people do not mind the term 'black' she does mind it, and that she did not like the word being used in a descriptive way. She told Mr Bramley that the word had not been said in an offensive way, but rather in a descriptive way.

73. Mr Bramley offered to speak to site staff directly or the team as a whole about the claimant's report that staff had been laughing at peoples' names, and he also offered to escalate the claimant's concerns to HR. The claimant said that she felt supported by the conversation they had and did not want the matter taken further via HR because, she said, the situation had improved since she sent him the message on 4 March. She also said that she did not want Mr Bramley to speak directly to anyone on site. She did not name any specific individuals who had made comments or laughed at people's names.

74. On 14 March 2025 Mr Bramley sent an email to the Operations North Team which was headed "Expect Respect refresh" and which included a link to a training video. In the email Mr Bramley asked everyone to watch again a Kier video on respect and suggested that teams sat together to discuss it. He also reminded colleagues that "*Its important we support each other and if anything makes you feel uncomfortable CALL IT OUT*".

75. Mr Bramley sent a separate email to the claimant informing her that he had sent the Expect Respect email. The claimant replied thanking Mr Bramley and stating that she would keep him updated. There was no evidence to suggest that the claimant ever contacted Mr Bramley again.

6 March incident

76. The claimant alleged that during a Teams meeting on 6 March 2025 when discussing the organisation of an Eid event, Wayne Pashley said that the claimant was not a member of the team, that Jenny Villairs said that it was not for the claimant

to speak to the client about changing the date for the Eid event, even though Ms Villairs had asked her to do it, and that Wayne or Jenny told her to stay out of organising the Eid event using raised, aggressive voices.

77. In her witness statement the claimant said that in late February 2025 she heard Jenny Villairs and Neil Sowden expressing frustration about organising an Eid event for a client and that it was 'insulting' to hold it on the wrong date. She said she had offered to help and was told that she could do, so took steps to arrange a more appropriate date. She also said that during a weekly site team meeting on 6 March, when she explained that she had arranged a date with the client which aligned with Eid, Wayne Pashley reacted angrily and questioned why she had done so. She also said that Jenny Villairs said it was not for her to change the date and that both Wayne and Jenny raised their voices at her, which she found upsetting.

78. Kieran Pell was not in the meeting, but the claimant exchanged messages which him during it and shortly afterwards. In her messages to Mr Pell the claimant wrote that "*multiple times Jen said for me to do it and she didn't want to now I'm in trouble*", "*they've proper stabbed me in the back lol*" and "*through me under the bus*". Mr Pell, who was not at the time aware of the full facts of the situation, commented that "*it does feel that way, I'm gonna have a word with her on Friday"* to which the claimant replied, *"no it's ok*".

79. Mr Pell also wrote "*It's Wayne's site at the end of the day, so we aren't in charge as a commercial team*" to which the claimant replied "*lol I just care about eid I'm just going to be petty and not help at all, I'm not even going to attend*".

80. The claimant also sent a message to another colleague, who had been in the meeting, commenting "*hate them so much*".

81. In his evidence to the Tribunal Mr Pell explained that the Eid event arose from social value obligations on the respondent to provide events for tenants. The team was concerned about offending tenants if the event was not done correctly. Jenny Villairs normally led on these types of events. The claimant wanted to get involved and had emailed the respondent's client and rearranged the date of the event without copying anyone else into the email. The claimant then told the team about the rearranged date at the team meeting where it came as a surprise to them. Wayne Pashley decided that Jenny would lead the event because she was his direct report.

82. At the time Mr Pell felt that the way that matters had been dealt with in the meeting was not fair and acknowledged as such to the claimant in the Teams messages he sent her on the day. When he sent those messages however he did not have the full picture as he was not aware that the claimant had changed the date of the event without copying others in.

83. We accept that during a Teams meeting the claimant was told not to get involved in organising the Eid event, and that Jenny Villairs would be responsible for it. The reason for this was that the claimant had changed the date of the event without informing others prior to the meeting.

Allegation about whispering

84. The claimant alleged that in March or April 2025 when working in an office near the claimant, Laura Edgar and Jenny Villairs started whispering when a contractor asked about the claimant and that on another occasion they were talking normally and then started whispering.

85. In her witness statement the claimant said that she had overheard a contractor asking Laura Edgar and Jenny Villairs "*Who's the new girl in the back*" and that they had begun whispering in response. On 2 January 2025 the claimant sent a message to Kieran Pell in which she wrote that "*lol I'l probably still go in though if laura & jenny start whispering about me again their getting politely told to stop*". Mr Pell replied "*go for it, they shouldn't be doing it in the first place*".

86. Mr Pell's evidence was that the claimant raised with him that Laura Edgar and Jenny Villiars had been whispering in the office. He asked the claimant whether she knew what the whispering was about and she said that she had not heard what was said. Mr Pell suggested that it was possible that they were whispering because Steve Blake was nearby on a call. Mr Pell suggested that the claimant speak to them directly and also offered to speak to them on her behalf. The claimant indicated that she did not want Mr Pell to intervene.

87. There was insufficient evidence before the Tribunal for us to conclude that Laura Edgar and Jenny Villairs were whispering about the claimant. We accept that there may have been whispering or talking in quiet voices in the office, but there was no evidence as to the content of the conversation or that it was about the claimant.

10 April : photos on the fridge

88. The Eid event took place in early April 2025 whilst the claimant was on annual leave. The claimant did not attend the event, but other members of the team did. Chloe Saunders took photographs of the team, which she put on the door of the fridge in the office. The claimant alleged that the pictures were of everybody else in the team except her, and that no one printed the claimant's photo off and put it in the group, even though that had been done previously.

89. The claimant's evidence to the Tribunal was that she was not aware of the team displaying photographs from previous social value events on the fridge in this way and that when Laura Edgar went on holiday the team had printed off a photograph of her, framed it and put it on her desk to remind them that she was still there.

90. When interviewed in August 2025 as part of the grievance investigation, Chloe Saunders said that she had messaged the claimant about the photographs she had taken of the team and put on the fridge, telling her "*I'll have to take one of you when you come back*". In the event however, she had not done so, largely because there were very few, if any, occasions on which Ms Saunders and the claimant were in the office together after that date, due to the claimant's annual leave, the claimant's sickness absence and occasions when they were working from home. In May 2025 the relationship between the claimant and Ms Saunders broke down.

91. We accept the respondent's evidence that the reason a photograph of the claimant was not placed on the fridge door was because the claimant had not been present at the event where the photos of other staff members were taken, and that Chloe Saunders did not get round to taking a photograph of the claimant after the event, despite having intended to do so, because she and the claimant were rarely in the office together, if at all, after the event.

30 April incident : the garden photo

92. The claimant alleged that on 30 April 2025 she shared a light-hearted photo in the team group chat showing her working from home in her garden, and that instead of taking it in the light-hearted way it was intended, Kieran Pell told the claimant that the site team might not like it and that it gave the wrong impression. She also alleged that other colleagues who had posted similar photos had not been treated in that way and that she was not treated in the same way when she posted a similar photo in a different group chat on the same day.

93. It was accepted by both parties that on 30 April 2025 the claimant posted a photograph in the team chat. In the photo she was sitting or lying on what appears to be a reclining chair or sun lounger in front of a desk with screens on. The claimant was in the garden wearing a sleeveless top and commented on the photo "*WFH heheje xx*". 'WFH' referred to working from home.

94. The day in question was a particularly warm one, and other members of the team were in the site office where there was no air conditioning. Mr Pell was in the office and heard others in the office grumbling about the photograph, suggesting that it was unfair as many of them could not work from home and were in a hot office.

95. The claimant sent a message to Kieran Pell that day to ask if she could work from home every Wednesday for the next 8 weeks. Mr Pell replied "*yep, no problem! Just don't send in pictures of you working outside every week please! It gives the wrong impression"*. The claimant replied, "*if people think I'm not working that's on them*". Mr Pell then wrote "*not to me, I'm fine with it but when the site team are cooped up in the dark office it's not a great, nah, it's more about people not being able to do the same".*

96. Instead of accepting the advice given by Mr Pell, her line manager, the claimant challenged it repeatedly in a chain of messages in which she insisted that others could work from home, despite Mr Pell stating that not everyone could work from home, as there was a requirement for people to be on site. When Mr Pell asked the claimant again not to send such photos to the group chat, she replied "*the site team just don't enjoy me being happy….I'm not going to dull my enthusiasm for life because people cannot share in it – that's their issue not mine...it's pretty sad if people can't share in my joy*".

97. Mr Pell explained to the claimant that "*I am trying to manage the feelings of everyone in the office to keep a productive work atmosphere. But you need to understand that at this point in time with works on site the site team need to be on*

site. There are groundworks going on next to live services and flat sprinkler installs which require people to be on site. So the people on site that cannot work from home feel bad when they see a picture of someone in the sun when they are unable to do that. It has nothing to do with not wanting you to enjoy the sun, it's just that they are unable and it isn't a great feeling. If I sent that picture and adam saw he would be having the exact same conversation with me." Even after receiving that explanation the claimant continued to challenge Mr Pell, replying "*I appreciate that but there isn't anyone in the chat who can't work from home…*"

98. The claimant's comments about the photograph indicate a lack of appreciation by the claimant of the feelings of other people. In her oral evidence to the Tribunal she maintained that she had done nothing wrong and that the others were in the wrong. She did not appear to countenance the possibility that there could be a different perspective to hers. Rather than accepting and taking on board the advice of her line manager, which was in our view entirely reasonable, she insisted on challenging it.

The claimant's grievance

99. On 1 May 2025, the day after the exchange of messages about the garden photograph with Mr Pell, the claimant sent an email to Daveen Cleworth in the respondent's HR team. In the email the claimant said she was writing to "*formally raise concerns regarding ongoing discriminatory behaviour, microaggressions, and a pattern of exclusion I have experienced within my team…. For the remainder of my time here I would like to be 100% remote to continue my job….I formally request to be placed in a different team where there is a significant racial diversity if I am to return to the office….I am requesting that HR investigate these matters thoroughly and ensure that appropriate action is taken to address the culture within the team….*"

Sickness absence

100. On 2 May 2025 the claimant was certified as unfit to work until 15 May due to work related stress. She sent an email to the respondent informing it that she had been signed off and would be away from work until 16 May. Kieran Pell sent an email to HR asking for advice as to what to do when a member of his team handed in a fit note. He was advised to do a welfare check on the claimant.

101. It is normal practice within the respondent for a manager to remain in contact with members of staff whilst they are off sick. This is in line with the provisions set out in the Managing Sickness Absence Policy. On 9 May Kieran Pell sent a text message to the claimant in which he wrote: "*Hi Amy, I hope you are doing ok, if you have some time early next week are you able to join a welfare check, this can be on teams or by phone call. The choice is yours."* The claimant replied, "*Hello, I do not wish to do a welfare check whilst I am signed off work due to work related stress. I can check in with you on my return date.*" Mr Pell did not send any further text messages to the claimant during her sickness absence.

102. On 15 May 2025 Laura Johansson from the respondent's HR team sent an email to the claimant attaching details of the respondent's Employee Assistance

Programme. She began the email with the phrase "*I appreciate that you are currently off sick, but I wanted to reach out to you to see how we can help.*" She asked whether the claimant would be open to having a welfare call with another manager such as Adam Storer, and whether the claimant would be comfortable with the respondent doing an occupational health referral "*so we can better understand what we can do to support your recovery and return to work*".

103. On 16 May the claimant returned to work. She sent an email to Daveen Cleworth in HR asking for an update on her grievance and for a timeframe for the grievance procedure. She also asked to be transferred out of her team immediately and wrote that "*for my return to be viable & sustainable I need to be allocated a different team with significant racial diversity*". She asked that her trade union representative be copied into all correspondence.

104. Daveen Cleworth replied to the claimant the same day. She informed the claimant that a manager had now been appointed to hear the grievance and would be in touch to arrange a meeting with the claimant and her union representative. She also said that "*we are looking into moving you temporarily to another site whilst the grievance is undertaken. Whilst this is reviewed and confirmed can I request you work from home on Monday.*"

105. On 19 May the claimant wrote again to Daveen Cleworth stating that she was feeling refreshed and had asked to work 100% remotely whilst the grievance was being investigated.

<u>21 May allegation : deletion of tasks from One Note</u>

106. The claimant alleged that on 21 May 2025 Chloe Saunders deleted some tasks from her One Note and that when the claimant sent a message to ask about it, Ms Saunders said words to the effect of "*Amy, please don't take that tone with me. All tasks assigned to you are now back under my control",* which was a complete change in tone from Ms Saunders towards the claimant.

107. The respondent accepted that Chloe Saunders had deleted tasks from the claimant's One Note. The reason for this was that whilst the claimant was off sick between 2 and 15 May, Chloe Saunders had picked up some of the claimant's tasks and in doing so, had deleted some tasks from the claimant's 'to do' list and put them on her own 'to do' list. When the claimant returned to work, Kieren Pell asked Chloe Saunders to take back the work that was on the claimant's to do list under the title "Items from Chloe".

108. Mr Pell did this for two reasons: firstly because he did not want the claimant to come back to a full workload after a period of sickness absence, but to ease back in gently; and secondly because during the claimant's absence, when he and Chloe Saunders had picked up a lot of the work the claimant had been doing, they had found errors in her work that had not previously been noticed.

109. After discovering that items had been deleted from her One Note, the claimant sent a message to Ms Saunders on 21 May in which she wrote "*Chloe don't delete*

items off my one note please with out checking with me first". Ms Saunders replied, "*I've updated your to do list with tasks that I'd set.*" and "*…please don't use a tone like this with me as I don't appreciate it. All tasks assigned to you under the section "from Chloe" are now back under my control. Thank you for your efforts on assisting me with them*".

110. After receiving this message, the claimant sent a message to Mr Pell, "*I'm not sure why Chloe is being difficult but can you tell her to stop please, it could be seen as retaliatory behaviour which has serious consequences. I've left the chat. I'm not being treated like that*". Mr Pell replied, "*I've seen it, I have spoken to her already. Just leave it there and so will she*". The claimant then wrote, "*I'm not working like this. I'l be taking leave again.*"

111. There was a change in the tone of Ms Saunders' communication with the claimant upon her return to work. Previously the two of them had been very friendly. This was evidenced by an exchange of messages on 1 May in which Chloe Saunders wrote that she was "*so sad*" that the claimant would not be in the office that day, and "*love u xxx*" and the claimant wrote "*hope you like your present though"* followed by a heart emoji.

112. Ms Saunders had decided to distance herself from the claimant and to block her on social media. When interviewed about this as part of the grievance investigation, Ms Saunders said that there had been multiple occasions when the claimant had said to her that people were racist or singling her out because of her race. Ms Saunders didn't think that was the case and had tried to communicate that to the claimant, whilst not wanting to say that the claimant was wrong because that was how the claimant felt. As a result, Ms Saunders retracted from the situation because she did not want to get involved.

113. On 18 May the claimant sent a message to Chloe Saunders in which she wrote "*Chloe why have you blocked me on everything*". Chloe replied the following day, "*Hi Amy, I hope you're doing well. I wanted to reach out to explain why I've removed you from my personal social media accounts. Due to recent circumstances, I've decided it's best to keep a clear boundary between my personal and professional life. This decision is in no way personal – it's simply to help me maintain a focused and professional working environment. I hope you understand!*"

114. On 21 May the claimant sent a further email to the respondent about the grievance. She attached a document in which she referred to "*retaliatory behaviour from a colleague, I work directly with this colleague and her changed behaviour towards me since leaving the office is not acceptable and is clearly bullying.*" She also wrote that "*I no longer feel safe to work with my team and I will not be until I am assigned a new project.*" Her new complaint, in summary, was that Chloe Saunders who she described as a 'very good friend until today', had blocked her on her personal social media accounts and deleted items from the claimant's personal One Note.

115. Daveen Cleworth replied to the claimant the following day, writing "*I am sorry to hear this*" and explaining that the respondent was proposing to move the claimant

temporarily to another project on a different site. She asked the claimant whether she was free for a call later that day.

116. Less than an hour after Daveen Cleworth sent her email on the morning of 22 May the claimant sent an email to Ms Cleworth in which she wrote:

"*Due to the continued deterioration of my psychological wellbeing due to the escalation of workplace hostility stated in my email 21/05/2025, I have a complete loss of confidence in the company's ability to protect my wellbeing by ensuring a psychologically safe working environment, I am now medically signed off again as of yesterday (21/05/2025) for work-related stress.*

I will not be returning to the team or environment currently in place. I am formally requesting:

- *Full pay during this period of ….sick leave & the last….sick leave, given the harm has resulted directly from Kier's failure to protect my health during and after my grievance*
- *That all communication be directed through my union representative….who will liaise back to myself*
- *Kier will continue investigating the concerns I have raised in my absence…*

I will also be opening a file with ACAS to begin Early Conciliation."

117. The claimant began Early Conciliation on 22 May and ACAS issued the Early Conciliation Certificate was issued on 3 July.

118. On 23 May Ms Cleworth responded to the claimant's email stating that she hoped the claimant would start to feel better soon. She also wrote that the respondent would continue to investigate the claimant's grievance. She explained that the respondent's normal process is to continue to liaise with both the employee and their representative and asked the claimant's union representative whether he was happy for the respondent to liaise directly with him. Ms Cleworth also set out in the email a number of sources of support for the claimant and stated that, subject to the claimant's agreement, she would arrange a referral to occupational health. Finally, she said that she was reviewing the sick pay position.

119. The claimant's trade union representative wrote to Ms Cleworth on 23 May, copying in the claimant. In the email he wrote that he was happy to support the claimant but did not want any correspondence to come via himself exclusively as, due to his schedule, it may delay any necessary support to the claimant. He asked instead that he be copied into any emails.

120. On 29 May Ms Johansson sent an email to the claimant explaining that she had arranged for Adam Storer to be her welfare manager and to do welfare calls. She asked whether the claimant was available for a call the following day, and also whether the claimant was happy for the respondent to proceed with a referral to occupational health. She attached details of the respondent's Employee Assistance Programme.

121. The claimant replied to Ms Johansson the same day, writing:

"*I would like to clarify that I have escalated this matter through ACAS Early Conciliation, I do not think it is appropriate to engage in direct discussions at this time.*

….I have formally requested that all communication be directed through my union representative….

I am also formally requesting that no further contact be made via my personal email address or phone number during my period of sick leave. Given the circumstances of my absence and the unresolved nature of my grievance, I find these welfare checks distressing and inappropriate….."

122. On 30 May Ms Johansson replied to the claimant's email, explaining that:

"*While we respect your wishes, we would still need to maintain a direct line of communication with you as your employer as we have duty of care to you.*

As welfare calls are part of Kier's absence procedure, it would be important for us to do them with you so we can discuss your recovery, treatment plans, expected recovery time and any support and help we can offer you to assist you back to work….

We can contact you on your work email and work phone if that is your preference?...."

123. The claimant wrote back to Ms Johansson saying that she would take the welfare call and that Mr Storer could call her anytime on Monday 2nd June. She asked to be left alone after that because she was "*emotionally exhausted*". Ms Johansson told the claimant that Mr Storer could not do a call on 2nd June because he was on leave and suggested either a call with Mr Storer on 30 May or with another manager on 2nd June.

124. The claimant replied on 30 May that:

"*Since the proposed date for the welfare call is no longer possible, I will not be participating in one at all.*

I want to be clear: my welfare is not good. I am signed off due to work-related stress caused directly by ongoing failures within Kier's management structure…..

I am again asking that all contact cease and all further communication be directed through my union representative….

There is your welfare call.

Please respect my health and legal boundaries…."

125. On 9 June 2025 Laura Johansson wrote to the claimant, copying in her trade union representative. She sought to reassure the claimant that the respondent wanted to help and needed to maintain a direct line of communication with her, but would copy her union representative in. Ms Johansson also suggested that as the claimant did not want to participate in welfare calls "*can we keep in contact weekly via email and so I can understand how your recovery is progressing and if there is any additional support we can give*". She asked the claimant if she was happy to be referred to occupational health and informed her that her grievance was being looked into. She sent details of the Employee Assistance Programme and of a number of other organisations who may be able to provide support with mental health issues.

126. The claimant did not reply to the email of 9 June so on 12 June Ms Johansson wrote to the claimant's union representative asking if he could check whether the claimant had received the email. The union representative did not reply.

<u>20 June 2025: allegation about change of the claimant's contract end date</u>

127. The claimant alleged that on 20 June 2025 the respondent's HR team unilaterally changed her contract end date from 31 August 2025 to 30 June 2025. The allegation is based upon a change that had been made on the respondent's HR system, which now stated that the claimant's Assignment End Date was 30 June 2025.

128. The reason for this was that in June and July 2025, the respondent implemented a change to its IT system, Oracle. A group wide exercise was undertaken to simplify reporting units and HR codes within Oracle. For the part of the business in which the claimant worked there were 5 new reporting unit codes introduced, and HR codes were redefined to show the work function employees were assigned to, or the client contracts they worked on.

129. The changes took effect across the group on 1 July 2025. The claimant had previously been assigned on the IT system to a code known as 1269 - Housing Maintenance South, but from the 1 July her new reporting unit was Building Solutions, and the HR Code changed to 1269 – Building Solutions Commercial. To reflect this change, the IT system showed an assignment end date of 30 June which was linked to the old reporting code. It did not mean that the claimant's contract was actually coming to an end, but rather than it was being reassigned to a new code. The same thing happened to many people across the group, including Daveen Cleworth.

130. On 20 June 2025 the claimant wrote to Daveen Cleworth saying that she had noticed that her end date had been changed to 30 June and asking why this had been changed without her having been informed or consulted. She sent a further email to Ms Cleworth on 26 June saying that "*I have viewed my payslip today, and seen a significant decrease, I am deeply disappointed Kier would do this to me….This kind of behaviour is exactly why Kier are in the position they are in with myself…*"

131. Ms Cleworth responded to the claimant's email on 27 June when she wrote:

"*….I am sorry that you are disappointed with Kier.*

With respect to your salary for June, you are currently on sickness absence and therefore, your salary reflects your contractual sick pay entitlement. Whilst you requested to remain on full pay during your absence there was no agreement to this and this in not inline with our normal practices….

….you emailed me with regards to the change in an end date on your HR record. I've looked into why this has been amended. AskHR are in the process of updating the reporting codes (1269 Housing Maintenance South) and HR codes within Oracle. As such all employees where there is a change have had an end date inputted into their AskHR record. I can confirm this change is to indicate changes in these codes and not the end date of your role."

132. The respondent produced evidence to the Tribunal of communications about the change to the IT system. The claimant alleged that these documents were deliberately fabricated for the purposes of this claim. Her allegation of fabrication was entirely without any foundation and is not upheld.

Resignation

133. On 3 July 2025 the claimant resigned with immediate effect. In her resignation email she wrote:

"*I am resigning in response to Kier's fundamental breaches of contract, including:*

- *the failure to provide a safe working environment;*
- *the failure to protect me from discrimination, victimisation, and retaliation; and*
- *the serious and ongoing breach of mutual trust and confidence, including the failure to conduct any meaningful investigation into my submitted grievance, change of contract end date, and lack of resealable adjustments….*"

Investigation of the claimant's grievance

134. The claimant raised her grievance on 1 May and was then off sick between 2 May and 15 May. She returned to work on 16 May, before going off sick again on 22 May and remaining off sick until she resigned on 3 July.

135. On 20 May Ben Summers, Head of Service Delivery, wrote to the claimant to introduce himself as the grievance hearer and to invite the claimant to a grievance meeting on 23 May in the Thorncliffe Park Estate office in Sheffield. The claimant replied to the letter asking for what she referred to as "*reasonable adjustments*". Firstly, she stated that she did not want the grievance meeting to take place in the Sheffield office so that the grievance could remain confidential. Secondly, she wrote that "*I do not feel comfortable being the only racially diverse person in this meeting and grievance proceedings – can you confirm if yourself or Sophie Easteal have racially diverse heritage subject to no less than one previous generation? If not, I would request a racially diverse Kier employee be onboarded*".

136. Mr Summers replied to the claimant the same day to acknowledge receipt of her email and inform her that either he or a colleague would respond "*with adequate changes (Within the next 2 working days) to address the points you have raised below and offer an alternative solution*".

137. Ms Cleworth asked James Walters, Senior SHE Advisor, who is black, to hear the claimant's grievance. Ms Cleworth then began a period of leave during which she asked her colleague, Laura Johansson, Assistant HR Business Partner, to manage the claimant's absence.

138. On 11 June James Walters, accompanied by Sophie Easteal from the HR team, interviewed Kieran Pell, Wayne Pashley and Wayne Bramley.

139. On 27 June Daveen Cleworth went an email to the claimant stating that the grievance manager was keen to meet with her. She suggested that she pass the claimant's email address to the grievance manager so that he could arrange a meeting with her and indicated that, in the alternative, if the claimant did not wish to meet, they would send her questions by email. The claimant replied the same day stating that she was willing to engage with the grievance manager by email and that they could send questions to her in writing, and she would respond "*Providing they have reorganised the investigating officers as I requested for a fair and balanced process*".

140. Ms Cleworth wrote again to the claimant on 2 July informing her that James Walters had been appointed as the grievance manager, supported by Sophie Easteal and that "*James is keen to meet with you so he can fully understand the concerns you have raised in your grievance, preferably this would be in person. If you are not able to participate in a meeting, which can be arranged to be held in a neutral venue such as a hotel rather than a Kier office, then he will arrange for questions to be sent to you.*"

141. Notwithstanding the claimant's resignation on 3 July, the respondent continued to investigate the claimant's grievance. On 16 July 2025 Sophie Easteal wrote to the claimant introducing herself and sending a list of questions for the claimant to answer. Ms Easteal did not receive a response to this email, so wrote again to the claimant on 23 July to follow up on her earlier email. She also wrote that "*Can I suggest that if we don't hear from you by end of next Wednesday, that James completes his investigation with the information he has already collected? But if you need more time to complete your responses, so these can be included in the investigation, please let me know….*"

142. The claimant replied the following day writing:

"*I have formally resigned and filed a claim with the employment Tribunal, I do not believe it is appropriate to continue engaging in this internal process.*

I raised serious concerns on 1 May 2025 and Kier has had over two months to initiate and conduct a meaningful investigation, at multiple stages, I made myself available

and sought to raise issues in good faith. The company's delay in addressing these concerns cannot now be remedied by rushed or retrospective action…"

143. Contrary to the assertion in this email, the claimant had not made herself available to participate in the grievance process. After sending this email the claimant played no further part in the grievance process. She did not meet with the grievance hearer or provide answers to the questions sent to her.

144. Notwithstanding this, the respondent continued to investigate the grievance. On 20 August James Walters and Sophie Easteal carried out further interviews with Laura Edgar, Chloe Saunders, Kieran Pell and Wayne Pashley.

145. Following these interviews, they produced a grievance investigation report which runs to 8 pages plus appendices. On 22 October James Walters sent a grievance outcome letter to the claimant. None of the claimant's grievances were upheld. In the outcome letter Mr Walters wrote:

"*…I do not uphold your concerns and allegations around a discriminatory workplace culture. The team have disputed that the specific comments were made you have not provided additional witnesses to collaborate any of the points raised. Additionally, the team all have noted your confidence from you starting in the team and believe you would have raised any concerns if something offensive had been said.*

Furthermore, as noted, you raised some points with Wayne Bramley and left him with the impression that you were satisfied with how he had chosen to deal with your concerns and the language people were allegedly using….

During my review it appears that during your first few days, weeks in the team you had been vocal with team members about the work being 'boring' and that you 'didn't want to be doing it'. Also referencing 'I can't be arsed to do that' and commenting about a team member's work being boring…

…I do not believe Kieran's behaviour amounts to workplace bullying….

….Chloe has confirmed that she had started to retract from the friendship due to comments being made by yourself about being 'singled out' and the team being 'racist'. Chloe shared that whilst she didn't think this was the case she did not want to say that you were wrong, as this is how you felt, so had slowly start to retract from the situation as she hadn't wanted to get involved. Chloe also pointed out that she had been tagged in a post you had posted on LinkedIn, which included pictures, which Chloe had felt were inappropriate…
Based on my findings I do not uphold this allegation that you experienced retaliatory behaviour from your colleague Chloe Saunders…."

<u>Knowledge of the protected acts</u>

146. Mr Bramley's evidence to the Tribunal, which we accept, was that he did not discuss his conversation with the claimant in March 2025 with any of the following :

Kieren Pell, Wayne Pashley, Jenny Villairs, Laura Edgar, Chloe Saunders; or anyone in the HR team. Although the claimant suggested that they were aware of the message she sent to Mr Bramley in March 2025 and their subsequent conversation, she had no evidence to support that suggestion. It was pure assertion. We prefer the evidence of Mr Bramley and find that he did not discuss the claimant's concerns or their conversation with anyone else. We also find that no one else was aware of the message the claimant sent to Mr Bramley on 4 March 2025.

147. Kieran Pell did not become aware of the claimant's grievance until 10 June, the day before he was interviewed for the first time as part of the grievance investigation. There was no evidence before us to suggest that Chloe Saunders was aware of the claimant's grievance in May 2025. Kieran Pell, who was more senior than Ms Saunders, was not aware of it until the 10 June and there was no reason why HR would inform a more junior member of staff, Chloe Saunders, about the grievance when Mr Pell was not aware. We find that Chloe Saunders was not aware of the grievance until either June 2025 when Mr Pell became aware of it, or more likely, in August 2025 when she was interviewed herself.

148. We find that the respondent's HR team did have knowledge of the claimant's grievance from 1 May 2025 when she first raised it.

The Law

Harassment

149. Harassment is defined in section 26 of the Equality Act as follows:

> "*(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…*"

150. In deciding whether the claimant has been harassed contrary to section 26 of the Equality Act, the Tribunal must consider three questions:

b. Was the conduct complained of unwanted:
c. Was it related to race; and
d. Did it have the purpose or effect set out in section 26(1)(b)?

Richmond Pharmacology v Dhaliwal [2009] ICR 724.

151. The two stage burden of proof set out in section 136 Equality Act (see below) applies equally to claims of harassment. It is for the claimant to establish facts from which the Tribunal could conclude that harassment had taken place.

152. In ***Hartley v Foreign and Commonwealth Office Services [2016] ICR D17*** the EAT held that the words 'related to' have a wide meaning, and that conduct which cannot be said to be 'because of' a particular protected characteristic may nonetheless be 'related to' it. The Tribunal should evaluate the evidence in the round, recognising that witnesses will not readily accept that behaviour was related to a protected characteristic. The context in which unwanted conduct takes place is an important factor in deciding whether it is related to a protected characteristic (***Warby v Wunda Group plc EAT 0434/11***).

153. Not every adverse comment will meet the legal test of harassment, even if related to a protected characteristic. Mr Justice Underhill commented in ***Richmond Pharmacology v Dhaliwal*** *that:*

> "*One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt*" and
>
> "…*not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the [Equality Act 2010]) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase*."

154. In ***Land Registry v Grant [2011] ICR 1390)*** the head note records:

> "*When assessing the effect of a remark, the context in which it is given is always highly material. A humorous remark between friends may have a very different effect than exactly the same words spoken vindictively by a hostile speaker. It is not importing intent into the concept of effect to say that intent will generally be relevant to assessing effect. It will also be relevant to deciding whether the response of the alleged victim is reasonable*."

<u>Victimisation</u>

155. Section 27 of the Equality Act:

> "*(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…*"

156. Although Tribunals must not make too much of the burden of proof provisions (***Martin v Devonshires Solicitors [2011] ICR 352***) in a victimisation claim it is for the claimant to establish that she has done a protected act and has suffered a detriment. There needs to be some evidence from which the Tribunal could infer a causal link between the protected act and the detriment, for example, the detriment occurs soon after the protected act, or others were not treated in the same way.

157. It has been suggested by commentators that the three stage test for establishing victimisation under the pre-Equality Act legislation, endorsed by Baroness Hale in ***Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] ICR 841*** can be adapted for the Equality Act so that it involves the following questions:

e. Did the alleged victimisation arise in any of the prohibited circumstances set out in section 27?
f. If so, did the respondent subject the claimant to the alleged detriment(s)?
g. If so, was the reason the claimant was subjected to the detriments that the claimant had done, or might do, a protected act?

158. Following the decision of the House of Lords in ***Nagarajan v London Regional Transport [1999] ICR 877*** it is not necessary in a victimisation case for the Tribunal to find that the employer's actions were consciously motivated by the claimant's protected act. Victimisation may occur if the discriminator was subconsciously affected by the protected act, and it had a 'significant influence' on his or her treatment of the claimant. An employer can be liable for an act of victimisation even where the motives for the treatment of the claimant are benign.

Direct discrimination

159. Section 13 of the Equality Act provides that:

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

160. When determining questions of direct discrimination there are, in essence, three questions that a Tribunal must consider:

1. Was there less favourable treatment?
2. The comparator question; and
3. Was the treatment 'because of ' a protected characteristic?

161. In a direct discrimination case, the claimant must have been treated less favourably than an actual or a hypothetical comparator. Section 23(1) of the Equality Act 2010 provides that there must be "*no material difference between the circumstances*" of the claimant and the comparator. The comparator must be "*in the same position in all material respects*" as the claimant, save that the comparator does not share the claimant's race (***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337***).

162. The Equality and Human Rights Commission Code of Practice on Employment (2011) states that:

"*…. it is not necessary for the circumstance of the two people (that is, the worker and the comparator) to be identical in every way; what matters is that the circumstances which are relevant to the treatment of the worker are the same or nearly the same for the worker and the comparator…*"

163. Where a comparison with an actual comparator can be made, there is no need for the Tribunal to construct a hypothetical comparator. Where a hypothetical comparator is required, the Tribunal must create a "*hypothetical "control" whose circumstances are materially the same as those of the complainant save that the comparator does not have the protected characteristic… The question is then whether such a person would have been treated more favourably than the claimant in those circumstances. If the answer to this question is that the comparator would not have been treated more favourably, this also points to the conclusion that the reason for the treatment complained of was not the fact that the claimant had the protected characteristic*" (***Gould v St John's Downshire Hill [2021] ICR 1, EAT***).

164. In ***Gould*** Mr. Justice Linden explained that "*The question whether an alleged discriminator acted "because of" a protected characteristic is a question as to their reasons for acting as they did. It has therefore been coined the "reason why" question and the test is subjective…For the tort of direct discrimination to have been committed, it is sufficient that the protected characteristic had a "significant influence" on the decision to act in the manner complained of. It need not be the sole ground for the decision…[and] the influence of the protected characteristic may be conscious or subconscious.*"

Burden of proof

165. Section 136(2) of the Equality Act 2010 sets out the burden of proof in discrimination claims, with the key provision being the following:

"*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

(3) But subsection (2) does not apply if A shows that A did not contravene the provision…"

166. There is, in discrimination cases, a two stage burden of proof (see ***Igen Ltd (formerly Leeds Careers Guidance and others v Wong [2005] ICR 931*** and ***Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205*** which is generally more favourable to claimants, in recognition of the fact that discrimination is often covert and rarely admitted to. In ***Igen v Wong*** the Court of Appeal endorsed guidelines set down by the EAT in ***Barton v Investec***, and which we have considered when reaching our decision.

167. In the first stage, the claimant has to prove facts from which the tribunal could decide that discrimination has taken place. If the claimant does this, then the second stage of the burden of proof comes into play and the respondent must prove, on the balance of probabilities, that there was a non-discriminatory reason for the treatment. So, if the claimant establishes a prima facie case of discrimination, the burden shifts to the respondent and the Tribunal has to consider whether the respondent's explanation is sufficient to show that it did not discriminate.

168. In ***Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913*** the Court of Appeal held that "*there is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent's act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage."*

169. The Supreme Court has more recently confirmed, in ***Royal Mail Group Ltd v Efobi [2021] ICR 1263****,* that a claimant is required to establish a prima facie case of discrimination in order to satisfy stage one of the burden of proof provisions in section 136 of the Equality Act. So, a claimant must prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

170. Where there are multiple allegations of discrimination, the Tribunal should consider whether the burden of proof has shifted from the claimant to the respondent in relation to each one, rather than taking a broad brush approach. In harassment cases the shifting burden of proof rules will apply in particular where the conduct complained of is not obviously discriminatory, and the Tribunal has to consider

whether the reason for the conduct is related to the protected characteristic relied upon by the claimant – in this case race.

171. In ***Glasgow City Council v Zafar [1998] ICR 120***, Lorde Browne-Wilkinson recognised that discriminators ' do not in general advertise their prejudices: indeed they may not even be aware of them'. Direct discrimination is often covert rather than overt, and a Tribunal can look at all the material before it when determining whether there has been less favourable treatment (***London Borough of Ealing v Rihal [2004] IRLR 642***).

172. The Tribunal has the power to draw inferences of discrimination where appropriate. Inferences must be based on clear findings of fact and can be drawn not just from the details of the claimant's evidence but also from the full factual background to the case.

173. Factors that may be relevant when considering whether a claimant has made out a prima facie case of discrimination can include:

1. Unanswered questions or evasive answers to questions;
2. Conduct during the proceedings;
3. The lack of a credible explanation by the respondent; and
4. Discriminatory comments

174. It is not sufficient for a claimant merely to say, 'I was badly treated' or 'I was treated differently'. There must be some link to the protected characteristic or something from which a Tribunal could draw an inference. In ***Madarassy v Nomura International plc [2007] ICR 867*** Lord Justice Mummery commented that: "*the bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."*

175. In ***Deman v Commission for Equality and Human Rights and others [2010] EWCA Civ 1276***, Lord Justice Sedley adopted the approach set out in ***Madarassy v Nomura*** that 'something more' than a mere finding of less favourable treatment is required before the burden of proof shifts from the claimant to the respondent. He made clear, however that the 'something more' that is needed to shift the burden need not be a great deal. Examples of behaviour that has shifted the burden of proof include a non-response or evasive answer to a statutory questionnaire, or a false explanation for less favourable treatment.

176. Unreasonable behaviour is not, in itself, evidence of discrimination (***Bahl v The Law Society [2004] IRLR 799***) although, in the absence of an alternative explanation, could support an inference of discrimination (***Anya v University of Oxford & anor [2001] ICR 847***).

Conclusions

177. The following conclusions are reached on a unanimous basis. In reaching our conclusions we have focussed on the substantive issues in the case, on the basis that if any of the substantive allegations are upheld we would then go on to consider time limits. As we have not upheld any of the allegations of discrimination, it has not been necessary for us to deal with questions relating to time limits or remedy.

Harassment related to race

178. There are five allegations of harassment before the Tribunal. The first is that on 18 November 2024 Laura Edgar described a tenant as a "*little old black lady*".

179. The respondent accepted that Laura Edgar used these words, and we find that this comment was made by Ms Edgar on 18 November 2024. We also find that the word 'black' relates to race, as it was used to describe the colour of an individual. The definition of race in section 9 of the Equality Act includes, at subsection 9(1)(a) "*colour*".

180. We have then gone on to consider whether the use of the word black had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

181. We accept that Ms Edgar when making the comment was using it purely as a descriptive term without any negative connotations. The claimant also acknowledged as such at the time. The comment was not addressed at the claimant, but at a colleague.

182. There is no evidence before us from which we could conclude that in making the comment Ms Edgar had the purpose of violating the claimant's dignitary or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We find that Ms Edgar did not have that purpose when she made the comment.

183. We also find that the comment did not have the effect of violating the claimant's dignitary or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. Two days after the comment was made the claimant told a trusted friend / advisor in a private text message that she was not upset by it. In February 2025 she sent a message to Kieran Pell in which she referred to the workplace being non-discriminatory.

184. Whilst we accept that the use of the word black can in some situations amount to harassment related to race, for example, if a negative or derogatory connotation is attached to the word, we find in these circumstances that it did not have any negative connotation but was purely descriptive. The claimant specifically wrote two days after the event that she was not upset about it. We therefore find that it did not have the proscribed effect.

185. The first allegation of harassment related to race therefore fails and is dismissed.

186. The second allegation is that on 19 November 2024 Kieran Pell laughed at a Helpdesk employee's name and mocked non-English names. We have found on the evidence before us that this event did not happen as alleged, and that Mr Pell did not do as the claimant suggests. This allegation is therefore not made out on the facts and fails for that reason.

187. The same applies to the third allegation of harassment, namely that Wayne Pashley mocked the name Prince Acheampong in a team meeting. We have found that Mr Pashley did not mock the name.

188. The fourth allegation of harassment is that in early March 2025 Wayne Pashley referred to "*two coloured ladies outside*" and was visibly startled when he saw the claimant nearby. As set out above in our findings of fact, we find that Mr Pashley did use those words but did not look visibly startled.

189. We have no hesitation in concluding that the use of the word "*coloured*" was related to race, as colour falls within the definition of race in section 9 of the Equality Act 2010.

190. We also find that, by using the word "*coloured*" Mr Pashley did not intend to violate the claimant's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment for her. Rather, he used the words to describe women who were stood outside the office. We have therefore considered whether the comment had the proscribed effect on the claimant and, if so, whether it was reasonable in the circumstances for it to have that effect.

191. We accept, on balance, that the claimant was upset by the comment and that it had the proscribed effect on her. It prompted her to approach Mr Bramley on 4 March to raise concerns, which is an indication that she was upset by it.

192. We find, however, that in all the circumstances, it was not reasonable for the comment to have that effect. It was a one off comment, not directed at the claimant and used to describe two people. The word was therefore used as a descriptor. We accept that the word is generally considered to be old fashioned and can be offensive. However, we take account of the comment in ***Dhaliwal*** that

"…*not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the [Equality Act 2010]) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase*."

193. This is, in our view, a comment that falls squarely within ***Dhaliwal*** and it was not reasonable in the circumstances of this case for the conduct to have the proscribed effect. The fourth allegation of harassment therefore also fails.

194. The final allegation of harassment relates to the deletion of tasks from the claimant's One Note on 21 May 2025 and a change in tone from Ms Saunders towards the claimant. The conduct complained of is admitted by the respondent, and we find that it did take place.

195. We have considered whether it can be said that the conduct was related in any way to race. In reaching our conclusions on this question we have taken account of the fact that the claimant has not adduced any evidence to suggest any link between Ms Saunders' behaviour and race. Moreover, it is clear that Chloe Saunders was, until early May, a good friend of the claimant who went as far as to message the words 'love you' to the claimant on 1 May.

196. The respondent has provided an entirely non discriminatory explanation for the acts of Ms Saunders, and we accept that explanation. The deletion of tasks from One Note was a straightforward action driven by Kieran Pell to ensure that work was carried out whilst the claimant was off sick, that the claimant was not overloaded on her return to work, and that errors in the claimant's work could be corrected. It was an entirely normal and reasonable management intervention which Ms Saunders carried out.

197. Similarly, the change in Ms Saunders' tone towards the claimant is explained by the fact that the claimant was constantly complaining about others in the team and Ms Saunders was uncomfortable with that. The claimant has not explained why, if Ms Saunders was motivated by race, she sent a message to the claimant saying she loved her just three weeks earlier.

198. This allegation of harassment also fails and is dismissed.

<u>Victimisation</u>

199. The claimant relies upon two protected acts, the report to Wayne Bramley on 4 March 2025 and the grievance raised on 1 May 2025. The respondent admits that the grievance was a protected act but denies that the report on 4 March was a protected act.

200. The respondent submitted that the 4 March message was not a protected act because it was vague, mentions no specific dates or individuals or whether the claimant was a witness to the alleged conduct, and that it does not mention provisions of the Equality Act or what the claimant thought the conduct may amount to.

201. In the message she sent to Mr Bramley the claimant specifically referred to racial discrimination, gave examples of the types of behaviour she was complaining about and was clearly seeking advice from a senior manager on how to address what she perceived to be race discrimination. There is no requirement in section 27 of the Equality Act for the person to specifically refer to the Equality Act in a protected act, or to mention dates and names or whether she was a witness to the conduct complained of.

202. We have no hesitation in finding that the claimant, in sending the message to Mr Bramley on 4 March was "*doing any other thing…in connection with this Act*" and "*making an allegation (whether or not express)*" that someone had contravened the Equality Act by discriminating against her.

203. We therefore find that the message to Wayne Bramley on 4 March was a protected act.

204. Having concluded that the claimant did two protected acts, we have gone on to consider whether the claimant was subjected to any detriments because of the protected acts.

205. There are 8 allegations of victimisation before the Tribunal. The claimant relies upon the first protected act (4 March message) for all of the allegations, and on both of the protected acts (the grievance and the 4 March message) for the last 4 allegations.

206. The first allegation of victimisation is made against Wayne Pashley and Jenny Villairs and their conduct during a Teams meeting on 6 March 2025. The second allegation is that Laura Edgar and Jenny Villairs whispered about the claimant. The third is that pictures of the team were placed on a fridge by Chloe Saunders and the fourth is about Kieran Pell's reaction to the claimant posting a picture of herself working in the garden in a group chat.

207. We have found as a finding of fact that none of those individuals involved in the first four alleged acts of victimisation were aware that the claimant had done a protected act because Wayne Bramley did not tell any of them about his conversation with the claimant. The Expect Respect email that he sent on 14 March did not identify the claimant or that any complaints had actually been made.

208. The claimant has not adduced any evidence in support of her assertion that the acts of the named individuals were motivated in any way by the complaint she made to Wayne Bramley, or that they were even aware of that complaint.

209. It therefore follows that the first four allegations of victimisation about the first four allegations could not have been motivated, consciously or subconsciously, by the message sent to Mr Bramley on 4 March.

210. Although Chloe Saunders knew, from her conversations with the claimant, that the claimant believed that the team was racist, the claimant did not rely upon her conversations with Chloe as a protected act. Wayne Bramley was clear in his evidence that he had not discussed the conversation he had with the claimant with Chloe Saunders, and the claimant did not suggest in her evidence that she had told Chloe above her messages to and conversation with Mr Bramley. There is in our view a difference between a protected act relied upon for the purposes of a complaint under section 27 of the Equality Act 2010 and a conversation between work friends in which one of those friends confides in the other that she believes there is racism in the workplace.

211. The first four allegations of victimisation therefore fail and are dismissed.

212. We turn next to the final four allegations of victimisation. The first relates to Chloe Saunders on 21 May deleting tasks from the claimant's One Note and changing her tone towards the claimant. It is accepted that those things occurred. We have to consider whether the reason for them was the claimant's protected acts. For the reasons set out above we have found that Ms Saunders was not aware of the claimant's messages to Mr Bramley and that she did not know about the grievance until June at the earliest and, more likely, until August.

213. In the circumstances, it cannot be said that Ms Saunders behaved towards the claimant as she did on 21 May 2025 because of either of the protected acts. Moreover, the respondent has provided an alternative explanation for why Ms Saunders acted as she did, and we accept that explanation. This allegation therefore fails and is dismissed.

214. The sixth allegation of victimisation is that between May and June 2025 the respondent's HR team did not meaningfully communicate with the claimant or update her for several weeks after she submitted her formal grievance.

215. We find that this allegation is entirely without merit. It is clear both from the evidence of Ms Cleworth and from the documentary evidence in the bundle, that the respondent went to considerable lengths to try and communicate with the claimant and to progress her grievance.

216. It was the claimant who did not cooperate with the respondent during this period. She was highly critical of the respondent and some of the language used by her was aggressive. The claimant did not appear to recognise that various individuals took steps both to support her from a welfare perspective, and to investigate her grievance in a way that would enable her participation.

217. The respondent offered the claimant welfare calls, a change of manager, a change of the style of welfare check ins (from calls to email check ins). It also offered a change of location, to be able to work from home. It changed the grievance hearer at the claimant's request, changed the location of the grievance meeting and offered her the opportunity of responding to questions in writing. This was clearly an employer who was positively engaging with the claimant and showing considerable flexibility towards her. It is difficult to see what more the respondent could have done to accommodate and engage with the claimant. They clearly saw her as a valued employee who potentially had a long term future with the organisation, and they took a number of steps to try and retain her.

218. This allegation of victimisation is not upheld. The respondent did not fail to meaningfully communicate with the claimant.

219. The seventh allegation of victimisation is that in June 2025 the respondent's HR team unilaterally changed the claimant's contract end date from 31 August 2025 to 30 June 2025. The end date of the claimant's contract was not in fact changed; it merely appeared on the respondent's system as if it had changed. The respondent

has provided an entirely plausible explanation for this. The explanation was provided to the claimant on 27 June, before the claimant resigned. The respondent's explanation was supported by documentary evidence in the bundle which indicated that this was a business wide change which was not directed at the claimant but rather affected many employees, including Ms Cleworth herself.

220. The claimant's assertion that the respondent fabricated these documents is without any foundation. The claimant has not produced any evidence to suggest that there was any link whatsoever between her grievance and the changes made to the respondent's Oracle system.

221. This complaint of victimisation is without merit also. It fails and is dismissed.

222. The final allegation of victimisation is that between May and July 2025 the respondent's HR team did not properly investigate the claimant's grievance. This allegation is also without merit.

223. The claimant was off sick for two weeks after raising her grievance and it is in our view reasonable for the respondent to wait until she returned to work and instead to focus on a welfare check during this first period of absence. Within a few days of the claimant's return to work on 16 May she was invited to a grievance interview. That hearing did not go ahead purely because the claimant asked for a different grievance hearer and a different location and it took some time to arrange this.

224. From then on steps were taken by the respondent to try and progress the grievance in the face of a lack of cooperation by the claimant and the claimant stating on several occasions that she didn't want to be contacted. It is normal practice and entirely reasonable for an employer to interview the person raising the grievance first, so that it can obtain more information about the complaints being raised before interviewing others.

225. When the claimant indicated that she wanted the grievance to progress in her absence, the respondent began carrying out grievance interviews and on 11 June interviewed Kieran Pell, Wayne Pashley and Wayne Bramlely. It tried to arrange a meeting between the claimant and the grievance hearer, and when the claimant indicated that she did not want to attend a meeting, it sent her a list of questions which she did not answer.

226. It is difficult to see what more the respondent could have done in the circumstances to investigate the claimant's grievance.

227. This allegation therefore also fails and is dismissed.

228. The claimant asserted that the respondent's treatment of her amounted to a fundamental breach of contract and that she resigned in response to that conduct, such that she was constructively dismissed. She also asserted that the constructive dismissal was a further act of victimisation.

229. We find that the respondent's treatment of the claimant did not amount to a breach of contract. Rather we find that the respondent acted entirely reasonably in

its interactions with the claimant. It is difficult to see what more it could have done to support her. It took her grievance and her welfare seriously.

230. The claimant knew that on 1 September 2025 she had an entirely new job, reporting to Wayne Bramley, who she appeared to have a good working relationship with. It is regrettable that the claimant resigned when she did, because she appeared to be well thought of and to have a bright future with the company.

231. We therefore find that the claimant was not constructively dismissed.

Direct discrimination

232. There were four allegations of direct discrimination, which relate to the same incidents as the first four allegations of victimisation.

233. In reaching our conclusions on the direct discrimination allegations we have reminded ourselves of the burden of proof provisions in section 136 of the Equality Act 2010 and of the power the Tribunal has to draw inferences of discrimination. We recognise that those who discriminate rarely admit to doing so.

234. It is clear to the Tribunal that the respondent took allegations of discrimination very seriously. This is demonstrated by the actions of Mr Bramley when the claimant raised concerns with him, and by the way in which the respondent dealt with the claimant's grievance. It is clear also that the claimant felt comfortable raising issues and that, when she raised them, the respondent responded appropriately. The only exception to that was Emma Codd's failure to follow through on her exchange of messages with the claimant, which remains unexplained.

235. The respondent continued to investigate the grievance despite the fact that the claimant had resigned and despite also the fact that she did not participate in the process, both before and after her resignation. Another employer might have chosen, in the circumstances, to take no further action once the claimant resigned.

236. We have considered the question of comparators, noting that the claimant relies upon a hypothetical white British comparator, and have asked ourselves whether a hypothetical white comparator would have been treated the same as the claimant. We find that they would have been.

237. The first allegation of direct discrimination relates to comments made during the Teams meeting on 6 March about the organisation of the Eid event. The respondent says that those comments were made because the claimant had contacted the client and changed the date without informing others who were responsible for the event. We accept that explanation.

238. The claimant has not provided any evidence from which we could conclude that the behaviour of Jenny Villairs and Wayne Pashley on 6th March was because of race. There is no evidence of animosity towards the claimant because of her race, and on the contrary she was well thought of. Nor was there any evidence from which

we could draw an inference. The respondent appears to this Tribunal to take diversity and inclusion seriously.

239. In addition, the respondent has provided an alternative and non-discriminatory explanation for the behaviour that day. The first allegation of direct discrimination therefore fails.

240. The second allegation of direct discrimination relates to alleged whispering in the office. We have found on the facts that there is no evidence that the whispering was about the claimant. This allegation is not made out on the facts.

241. The third allegation is about Chloe Saunders not putting the claimant's photo on the fridge. At the time this happened there was no animosity whatsoever between the claimant and Chloe Saunders. Indeed, three weeks after the alleged act of discrimination Ms Saunders messaged the claimant "*love you*". There is no evidence whatsoever to support the claimant's assertion that Ms Saunders was motivated in any way by race. Ms Saunders was a friend of the claimant's at the time.

242. In addition, the respondent has provided an alternative explanation for the situation involving the photographs. The claimant was not at the event when the photographs was taken. She had chosen not to attend. Ms Saunders initially intended to take a photo of the claimant and put it up, but circumstances then intervened which meant that did not happen. This allegation also fails.

243. The final allegation of direct discrimination relates to the photograph in the garden and Mr Pell's response to that photograph. This allegation is also without any merit. There is no evidence whatsoever to suggest that Mr Pell's response was linked in any way to race. Mr Pell's evidence was that if a photo had been put on by anyone else he would have pulled them up on it. We accept that evidence.

244. It was insensitive of the claimant to post a picture like that on a very hot day whilst others are in the office and the photo upset those who had to work in the office that day. In acting as he did Mr Pell was seeking to maintain harmony between different members of the team.

245. The final allegation of direct discrimination therefore also fails.

Employment Judge Ayre

Date: 27 May 2026