EMPLOYMENT TRIBUNALS (SCOTLAND)
Case No: 8000208/2025

Held in Glasgow on 8, 9, 10, 11 and 12 June 2026
Members' Meeting on 20 July 2026

Employment Judge M Robison
Tribunal Member L Hutchison
Tribunal Member N Quinn

Ms C Jasper	**Claimant** **In Person**
Glasgow City Council	**Respondent** **Represented by** **Ms A McFarlane - Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant's claims under the Equality Act 2010 and the Employment Rights Act 1996 are not well-founded and are dismissed.

REASONS

1. The claimant lodged a claim in the Employment Tribunal on 24 January 2025 claiming unfair dismissal, disability and race discrimination and victimisation, as well as making claims for notice pay and holiday pay.

2. A previous final hearing, held shortly after the claimant's representative had withdrawn from acting, was postponed for the claimant to make an application to amend, which was allowed in large part.

3. The claimant also sought and was granted an order for a trade union representative to disclose the names of comparators whom he had previously represented in similar cases.

4. A joint list of issues was produced which are considered in detail below in the deliberations section. The claims broadly relate to unfair dismissal, unfavourable treatment (dismissal) arising in consequence of disability, victimisation and direct race discrimination.

5. Shortly prior to the first day of the hearing, the claimant made an application for witness orders for Sean Hanlon, the investigating officer, and for Pamela Carruthers, HR assistant.

6. We considered the claimant's applications for witness orders at the outset of this final hearing. We heard submissions from the claimant and objections from Ms Macfarlane. Following a short adjournment we decided that the claimant's request for witness orders should be refused for the following reasons.

7. We took account of the fact that the claimant intended to call her trade union representative, Mr Graham Hood, as well as his colleague, Mr Stewart Graham, who had represented other trade union members in similar cases. The respondent was to call the claimant's line manager Ms Monica Gardner; the group manager Ms Ann Fehilly; the decision-maker Mr David McCulloch; as well as an HR manager Mr Thom Hughes (with regard to the appeal). We were also due to hear from Ms Linda Cassels regarding how comparators were treated (but it transpired that she was not required).

8. In regard to Ms Carruthers, we understood that she had taken notes at the disciplinary hearing; that she had liaised with Mr Hood regarding comparators; and that the claimant wanted to ask her more generally about HR procedures. We refused the application for a witness order because she was not a decision maker at the disciplinary hearing and we would hear from the decision maker as well as Mr Hood and an HR manager.

9. In regard to Mr Hanlon, although Ms Macfarlane had originally intended to call him, we heard that he is currently on paternity leave. While we accepted that, as the investigating officer, he was a potentially relevant witness and we noted that the claimant wanted to ask him about what she saw as deficiencies in his investigation, we accepted that she could ask questions about this of the other witnesses and in particular Mr McCulloch the decision-maker. Accordingly we took the view that neither witness order was necessary.

10. At the outset of the hearing the claimant confirmed that she is seeking re-engagement with the respondent (although not reinstatement).

11. The respondent had lodged a joint file of productions which was referred to throughout. Additional documents were lodged during the course of the hearing by the claimant to which the respondent did not object and by the respondent in response to requests from the Tribunal. More documents were lodged after the hearing to support evidence heard, and parties were given an opportunity to comment on them. The claimant was invited to lodge further medical evidence to support her submissions.

12. Although the claimant had included notice pay and holiday pay in her schedule of loss, she accepted that these formed part of the compensation she was seeking for subsequent loss of wages following her dismissal, and were not stand alone claims.

Findings in fact

13. The Tribunal finds the following relevant facts admitted or proved.

14. The claimant commenced employment with the respondent as a domestic abuse advocacy worker on 1 October 2015. She was assigned to ASSIST (Advocacy Support Safety Information Services Together) which is a department managed by the respondent’s Community Safety and Regulatory Services Neighbourhoods Regeneration and Sustainability division. ASSIST is an advocacy service which supports people who have been affected by domestic abuse with a case going through the criminal court system.

15. ASSIST staff use two databases for their work, an internal database called ALBA which is an information management system which lists all staff and their current caseload, and an external database operated by SCTS.

ASSIST agreement with SCTS for use of their data

16. As part of their role, ASSIST staff have been granted access to the SCTS database by SCTS, through a criminal offences portal (COP). The database provides those who have authorised access with indepth information about pending and ongoing court cases, including the victim’s name, address, names of witnesses, any bail conditions and information on court dates.

17. The respondent has a data disclosure agreement with SCTS which authorises ASSIST staff to access the system and which governs their use. The data disclosure agreement states that SCTS has agreed to disclose the data to the recipient only for the purposes which are set out in that agreement.

18. The agreement includes the following:
    (i) parties agree not to use any data disclosure in a way that is incompatible with the purposes;
    (ii) a security breach means any breach or suspected breach of any of the data recipient’s obligations set out in the agreement, or “any other unauthorised or unlawful processing, accidental or unlawful processing, accidental or unlawful destruction, loss alteration, unauthorised disclosure of or damage or access to the data”;
    (iii) In the event that SCTS has any reason to believe that the data recipient is in breach of any of its obligations under this agreement, SCTS may at its sole discretion suspend the disclosure of data until such time as SCTS is reasonably satisfied that the breach has stopped or will not re-occur;

(iv) Except to the extent that the purposes….require otherwise…the data recipient undertakes to only use (and only permit use of) the confidential information for the stated purposes;

(v) access to the portal and SCTS documents and other media are restricted to the data recipient staff to the extent required for the stated purposes;

(vi) no data recipient staff should have access to data sets available from the Portal that is not needed for their duties.

19. Under "Purposes" it is stated as follows:

"4. Having direct access to the court outcomes will allow the ASSIST service to provide a more effective and efficient service to our clients and victims crimes…

5. It is agreed that the most efficient way for SCTS to provide this information… is to facilitate access through COP which provides third party access to criminal case data.

6. ASSIST also use the case information from the COP to ensure appropriate information is sent to COPFS as close to the date of the hearing as possible. This information consists of the victim's attitude to the prosecution, her/his level of risk, any particular features the Depute would find useful, such as the victim's attitude to a non-harassment order and is for the purpose of the Depute having all relevant information at hand at each stage of the case. Access to the Portal will be used to check information held for accuracy. Although COPFS has direct access to the Portal, this access by ASSIST allows for information on client protection to be provided in an up to date and holistic way".

20. Under IT requirements, it is stated that each distinct ASSIST user must have his or her individual account, which must not be used by any other person.

21. Under security requirements it is stated that ASSIST will seek to ensure that its users access court case data responsibly and only when required in order to assist a specific victim or witness. ASSIST superusers will be able to create and delete user accounts and will be able to access audit information on usage and a condition of the service is that ASSIST will carry out routine checks on usage at least quarterly and notify the SCTS if they identify any cause for concern.

22. The respondent introduced a procedure change in December 2017 to the audit requirements, which stated:

(i) COP user access should be audited quarterly;

(ii) "superusers" should spot check a minimum of 20 searches by each advocacy worker, lead advocacy worker and administrative staff. The searches should be cross-checked to ALBA to ensure that the search links to a case which was open at the time, ensuring that the search was necessary;

(iii) Any searches that do not match a record within should be highlighted to senior management for further investigation.

23. The auditing requirements are supplemented by guidance issued by SCTS "Audit Requirements and Guidance for users of the SCTS Criminal Online Portal". That includes the requirement to provide an "annual statement of assurance", which is a template document which was signed for 2024 by Ann Fehilly, group manager for the division.

24. The COP is accessed via a secure link. Each member of staff in ASSIST has their own username and password. Staff accessing the system will see a message which states, "please note: access and use of any data on the criminal online portal should remain limited to the users required purpose and functions". To look up a case both the name and the fiscal reference must be entered.

Background circumstances of the claimant

25. The claimant is black. She is a single mother. She has the conditions of Attention Deficit Hyperactivity Disorder (ADHD) and Lupus. Disability is conceded by the respondent, and the respondent accepts that they had knowledge of these conditions at the relevant times.

26. When the claimant was diagnosed with ADHD in January 2022, certain reasonable adjustments were implemented, including agreements around communicating in person rather than by telephone. That included an agreement to communicate by telephone to undertake a review on intake, which was the first contact with the client.

27. The claimant lodged a claim in the employment tribunal in 2023 (case number 4103404/2023). That claim, for disability discrimination only, was resolved by way of a COT3 agreement following judicial mediation.

28. The agreement included reasonable adjustments and an undertaking to arrange diversity and inclusion training for the department to take place in person. The judicial mediation for the respondent was facilitated by Ann Fehilly and Karen Broadley, HR representative.

Support and supervision sessions including complaint about colleague

29. The claimant's line manager is Monica Gardner, service manager with ASSIST. Monica Gardner holds a support and supervision session with each member of her team, including the claimant, every eight weeks.

30. During a support and supervision session which took place shortly after the conclusion of the judicial mediation in November 2023, the claimant inadvertently mentioned the agreement to Monica Gardner, believing that, as her line manager, she would be aware

of its terms. She subsequently undertook through her lawyer not to discuss the agreement reached following the judicial mediation with other parties.

31. Prior to each support and supervision session, Monica Gardner would undertake a COP audit for all of her team members. That consisted of checking access by the member of staff to the COP, cross referenced against their own database ALBA. This was in line with the requirements of the data sharing agreement with SCTS. The names of the clients searched were recorded on a note made by the line manager following the session.

32. On 22 February 2024 at a support and supervision session the claimant raised issues about adjustments which were to be made to facilitate her return to the office after working exclusively from home. The claimant suggested that she would e-mail Ann Fehilly because she was aware of the terms of the agreement following the judicial mediation.

33. On 19 April 2024, at the next support and supervision session which took place, Monica Gardner confirmed that the claimant could attend a four-day training session. The claimant also asked about the diversity training which was to be organised following the judicial mediation. Monica Gardner said that she did not know anything about it and advised the claimant to ask Ann Fehilly.

34. At that meeting, the claimant also raised an issue which she had with a colleague Genevieve Littauer-Dolan, who at that time was on maternity leave. She advised that she disagreed with content she had posted online which she considered to be Islamophobic. She advised that they had had a disagreement and had blocked each other online. The claimant is noted as saying that she was nervous about her coming back because as her lead advocacy worker she would be reviewing her files. Monica Gardner encouraged the claimant to let her know if any issues arose. The claimant said she would be professional when dealing with her and contact her only about work.

35. On 19 April 2024 at 14.45 the claimant e-mailed Ann Fehilly, as suggested by Monica Gardner, asking if there had been any progress with plans for arranging valuing diversity/discriminatory practices training for all staff.

36. On 19 April 2024 at 16.14 Ann Fehilly forwarded the claimant’s email to Karen Broadley. She reminded her that points were raised around equality and diversity training for staff as part of the agreement following mediation. She asked for details about what was being offered/provided for staff. At 16.15 she advised the claimant that she had passed her e-mail onto HR who would provide an update.

37. On 23 April 2024 Monica Gardner and Harriet Arthur (her line manager and the line manager of Genevieve Littauer-Dolan) had a meeting with Jacqueline McCormack, HR officer, to discuss the claimant. They discussed her concerns about Genevieve Littauer-Dolan’s return to work given their interaction outside of work, and her request for

information about the diversity training. Jaqueline McCormack advised that the claimant should be asked to put her concerns in writing, and that they should raise the training issue with Ann Fehilly.

38. On 23 April 2024 at 11.26 Monica Gardner e-mailed Ann Fehilly copying Harriet Arthur. She advised that she had advised the claimant to speak to her about the diversity training as recommended by HR.

39. On 23 April 2024 at 13.05 Ann Fehilly responded to Monica Gardner copying Harriet Arthur advising that the claimant had e-mailed her. She said she had replied and forwarded the matter to Karen Broadley as the HR representative who attended the judicial mediation. She said that she had advised that HR is responsible for identifying and offering training to staff.

40. On 23 April 2024 at 12.12 the claimant sent an e-mail to Monica Garner headed "supervision discussion" in which she referred to the concern she had raised about Genevieve Littauer-Dolan's post which she perceived to be Islamaphobic, and explaining why she had raised the matter in the supervision session namely:

"Everyone has bias and blindspots, including myself, that are not discussed openly or through relevant training with ASSIST. Given my recent experience within ASSIST, I am weary and concerned for my own mental health regarding prejudice, discrimination, racism, etc. I stressed that Ginny and I will be always professional, but that this incident has showed me how much training in this area is required. I made reference to a time in 2018/2019 where Ginni said she was against arranged marriage. Me and a colleague gave explanations about forced and arranged marriages and how they differ. Ginni said that she disagreed with arranged marriages. All of that to say that and reinforce my view that training is needed. During my discussion with yourself Monica I stressed how important valuing diversity training was, to help everyone become aware of their bias and manage it appropriately. Monica you said that everyone is entitled to their opinions out of work and that social media isn't monitored. However with no valuing diversity training, how can we be sure that our clients' vulnerabilities if they are part of marginalised groups won't be taken into account if advocacy workers, managers and everyone within ASSIST are not trained in this area. When I have raised discrimination, racism, prejudice within ASSIST or with HR. From my experience it seems there is more of a worry about me raising or naming the discriminatory concerns, more than the practice itself".

Request for diversity training

41. On 23 April 2024 at 12.36 Monica Gardner forwarded the claimant's e-mail to Jacqueline McCormack, copying Harriet Arthur.

42. On 26 April 2024 at 10.10 Harriet Arthur e-mailed Ann Fehilly copying Monica Gardner advising that the claimant had e-mailed saying that the delay in organising the training was impacting her mental health, offering to forward the claimant's e-mail.

43. On 26 April 2024 at 13.37 Ann Fehilly thanked her for the update and asked her to forward the claimant's e-mail for her to pass to Karen Broadley, which she did at 13.54.

44. On 26 April 2024 at 16.28 not having had a response from Karen Broadley, Ann Fehilly e-mailed again saying she did not know what was written up into the final agreement following judicial mediation. She said that the claimant had also raised the training issue with her line manager and asked for assistance in how they were to respond. She mentioned that the claimant had said that the lack of action was impacting her mental health, and included an extract from her e-mail. She received no reply.

45. On 14 June 2024 the claimant had another support and supervision session with Monica Gardner. The claimant said she had not heard anything further from Ann Fehilly or HR about the diversity training, which she thought would help her get back into the office. Under the heading, "other issues" it was noted that the claimant had advised that she had been cited for court the next week for an incident related to an old school friend. Monica Gardner asked her to get put on standby for this, and the claimant said she would contact the fiscal that day. The claimant forwarded a copy of the citation as requested.

Interaction with colleague

46. On 25 July 2024 at 15.06 Genevieve Littauer-Dolan e-mailed the claimant regarding one of her cases which she had to report on, asking her to let her know when she had finished preparing it, because she was having to finish up sharp that day. She sent a follow up e-mail at 16.10 asking her if she needed help to complete it.

47. The claimant responded at 16.33 to advise that the MARAC (multi-agency report) had been completed, but also that she believed the number of e-mails she had sent her regarding the case was excessive.

48. At 16.42 Genevieve Littauer-Dolan replied, copying in her manager and the claimant's manager, as follows: "Thanks Charlene. I completely disagree. I would have expected the MARAC prep to be done well before now and for any issues to be communicated so that if any support or things you are waiting on I am aware of and can provide support. You advised that this will be completed yesterday and I had been looking out for this all of today so do not think that is unreasonable at all to send you an email to ask you to update me and a further email to ask if you need any support near close of play. Feel free to flag this to management should you wish to, have copied them in for ease…."

49. At 16.55 the claimant replied, copying in the managers, "how I feel isn't debatable, nor are you in a position to tell me how to feel about your communication style. The majority of the prep for this MARAC was completed yesterday and I am able to articulate when I need support. You could have called me if you required clarity or if you needed support to understand what had been going on for this client…."

Claimant's unauthorised access of SCTS database

50. On 29 July 2024 the claimant, not having heard any update about the criminal trial in which she had previously been cited, went on to the SCTS COP database to find out the trial date.

51. On 1 August 2024, in preparation for the next support and supervision session with the claimant which was due to take place on 8 August 2024, Monica Gardner undertook an audit of court records accessed by employees via the SCTS system as required by the agreement with SCTS. Using her own knowledge of the client's names, and also cross referencing with the respondent's own database ALBA, she checked whether there had been any inappropriate access to the SCTS system.

52. During the audit Monica Gardner noted that the claimant had accessed a court record on 29 July 2024 which was not on ALBA and did not appear to be part of her case load. Monica Gardner reported that to Harriet Arthur, as operations manager in accordance with standard procedure. Harriet Arthur then notified Ann Fehilly as group manager. Monica Gardner later recalled that the claimant had advised her that she was due to attend court as a witness in a non-work related trial. She checked the citation and saw that the record corresponded with the name of the person on the citation.

53. On 6 August 2024 Ann Fehilly advised the claimant that a formal investigation was to be conducted into an alleged data breach caused by the claimant accessing a court record without authority. That investigation was to be conducted by Sean Hanlon, operations manager. Because the allegation was serious, and potentially gross misconduct, the claimant was suspended on a precautionary basis. That decision was confirmed in writing by letter dated 6 August 2024.

Investigation and report

54. On 9 August 2024 Monica Gardner was interviewed by Sean Hanlon in connection with the incident, and the claimant was advised that she was required to attend an investigatory interview to be conducted by Sean Hanlon, which was rearranged and took place on 21 August 2024. The claimant was accompanied by her trade union representative, Kath Stirling. A detailed statement was typed up and the claimant was asked for her comments and to confirm whether it was accurate.

55. On 26 August 2024 the claimant wrote to Sean Hanlon to clarify the last paragraph. She advised that she wanted it noted that she had accessed a tab to clarify if the case from July was continuing and if she was likely to be required as a witness; that her line manager knew about it; that she had sent her a copy of the citation; she explained her relationship with the accused; and said she had been open and transparent with colleagues.

56. On 28 August 2025, Sean Hanlon completed the disciplinary investigation outcome report. In the report he noted that during the claimant's interview:
(i) the claimant admitted that she had accessed the record;
(ii) she confirmed this was the case in which she was cited to appear as a witness for the prosecution;
(iii) said that she was fully aware that she should only accessed court records relevant to her case load;
(iv) she advised that she got "on the job" training on the system and provided by other advocacy workers at the time;
(v) she advised that she had completed the respondent's online learning portal course (GOLD) on information security;
(vi) stated that she had never, in the nine years in her role, accessed any court record not related to her caseload before;
(vii) stated that she deeply regretted doing so;
(viii) stated that the information she obtained is similar to what she would get if she called SCTS telephone line;
(ix) advised that she did not want to wait 45 minutes on the phone to get information that would help her organise her life;
(x) advised that some of the information would also be available to anyone who attended open court as details are read out;
(xi) accepted that would not include the name of the accused but said that she knew them;
(xii) believed that she had not caused a data breach as she had not shared the information obtained with anyone else;
(xiii) stated that she suffers from a range of conditions including ADHD "and impulsive decision such as this can be linked to the condition";
(xiv) agreed that to access the system the claimant would have had to have entered into the system the surname of the accessed and the fiscal reference number.

57. It was recommended that the case should proceed to a disciplinary hearing as there was a case to answer. The report noted that "as a result of [the claimant's] data breach, [the respondent] now awaits any subsequent actions determined by SCTS in relation to ongoing access arrangements to the SCTS system as outlined in the information sharing protocol between GCC and SCTS".

58. The report included the following appendices
   (i) Copy of the SCTS General Enquiry Record of 29 July 2024, subject of the data breach (redacted)
   (ii) Copy of the information sharing protocol between GCC and SCTS
   (iii) Screenshot of SCTS welcome screen with terms of use statement
   (iv) Copy of email sent from the claimant to Monica Gardner with citation (redacted)
   (v) Copy of SCTS -audit requirements
   (vi) Signed interview statement of Monica Gardner 9 August 2024
   (vii) Signed interview statement of the claimant 21 August 2024.

59. On 6 September 2024 the claimant wrote to Pamela Carruthers, HR assistant, to advise that she had asked her union rep to accompany her at the hearing. She asked to be advised of SCTS's response to the data breach. The claimant's union representative Graham Hood was subsequently told by Pamela Carruthers that they had not yet received a response from SCTS regarding the data breach.

Disciplinary hearing and dismissal

60. On 15 September 2024 the claimant was advised that she was required to attend a disciplinary hearing on 19 September 2024 to be chaired by David McCulloch, head of recycling, streetscene and waste management, who was to be assisted by Pamela Carruthers. The claimant was advised that a range of disposals would be considered including dismissal on the grounds of misconduct or gross misconduct.

61. The disciplinary hearing took place on 19 September 2024. The claimant was advised at the end of the hearing that she had been dismissed with immediate effect.

62. The notes which were taken of the meeting were very summary, and handwritten and not transcribed.

63. The decision was confirmed by letter dated 19 September 2024 which included the following:

   "It was stated that you were an experienced member of staff who was in a position of trust and had authorisation to access sensitive and confidential court case information by SCTS database. You stated that you were aware that you should only access the information on this database for work-related cases and confirmed that, on 29 July 2024, you accessed a court record for a case that you were cited to attend as a witness in a non-work-related court trial. You said that you accessed the record to find out the court date and stated that there was an alternative and legitimate way to access this information by telephoning SCTS telephone line. However you indicated that you did not wish to do this because there can be a lengthy wait on the telephone line.

You said that you understand that accessing the SCTS database for a non-work-related case was a serious matter. However, you said that there were no serious consequences in you accessing this record as you did not share the information with anyone. As such you did not provide me with confidence that you fully understood that this was a data breach or that you understood the severity of your actions or the risks your actions could have on the Council and its relationship with SCTS and the provision of the ASSIST service.

In reaching my decision, having considered the above, I also considered your length of service and your awareness of the standards of behaviour and conduct you are expected to follow. Therefore taking all of the above into consideration, I decided to summarily dismiss you from the service with immediate effect…"

Appeal

64. By e-mail dated 2 October 2024 the claimant confirmed her intention to appeal, requesting a copy of the note/minutes taken by Pamela Carruthers during the hearing and asking about time scales for the appeal.

65. On 21 October 2024 the claimant sent a reminder because she had received no reply. She asked when the hearing appeal would be arranged and again for a copy of the notes.

66. On 23 October 2024 the claimant received a reply from Thom Hugh, HR manager (corporate). He advised that the appeal would be heard by the Personnel Appeals Committee; there was a full diary of appeals; that further dates were being identified; that because of the full diary and planned Council recess from 15 December 2024 until 13 January 2025 it would not be before January/February 2025. The claimant was also advised that there were no formal minutes of the hearing and any notes taken by HR representatives were personal notes and not appropriate for circulation to all parties.

67. On 25 October 2024 the claimant emailed Corporate HR to check that they had received her appeal on 2 October 2024, asking whether her case was being considered for a hearing from that date, stating that "five months seems an excessive amount of time".

68. On 30 October 2024 the claimant was advised that her appeal would take place on 4 February 2025; that her initial appeal was received on 2 October; that cases were allocated to available dates, in accordance with the date of receipt and established processes.

69. The claimant was advised by letter dated 11 February 2025 that the Personnel Appeals Committee had rejected her appeal following the hearing on 4 February 2025 on the grounds that the decision to dismiss was reasonable in all the circumstances.

Freedom of information requests

70. The claimant subsequently obtained information regarding communications between the respondent and SCTS and internal communications with governance officers through freedom of information procedures, which were provided with numerous redactions but which included the following.

71. A data security incident report form completed by Ann Fehilly, which records that:
   (i) The operations manager emailed Ann Fehilly and other operations managers to advise of the breach and asked for this to be discussed at SMT meeting on 2 August 2024 to agree a course of action;
   (ii) On 2 August 2024, Ann Fehilly sought guidance from HR regarding the breach when precautionary suspension was discussed and suspension of COP access; it was agreed that an investigation would take place and a precautionary suspension letter prepared; she e-mailed the SCTS information, governance and correspondence officer and SCTS data protection officer advising of the incident;
   (iii) On 5 August 2024, the SCTS information, governance and correspondence officer replied stating,
   "Thank you for reporting this breach, whilst not an SCTS breach I have recorded it in our tracker and would be grateful if you could provide some further information in relation to the questions noted below:
      Has the staff member received training/guidance on the use of COP
      Is there written guidance that advises against using COP for non-work related searches
      When the staff member returns can you advise they have not copied or misused any information from the search
      Has your organisation noted and investigated this as a data breach with full consideration as to what reporting or actions to prevent future breaches is required?"

72. On 7 August 2024 Ann Fehilly reported this to NRS SAIRO, NRS governance officer and NRS head of community safety resulting in extensive discussion about potential implications regarding data protection and data sharing agreements.

73. On 9 August 2024 the governance officer for NRS emailed a number of internal colleagues advising of the reported incident and enclosing correspondence from SCTS and the data breach incident form.

74. On 14 August 2024 the chief executive's data protection officer requested further information and in particular "a better idea from the investigation of what they accessed, why they were accessing the file and what they did once they accessed the file…" and

whether they were aware that the employee has shared the information further after accessing it, take copies or send it on to other parties?

75. On 15 August 2024 Ann Fehilly replied stating that they did not know and that she would find out whether she could ask this of the HR officer.

76. On 20 September 2024 Ann Fehilly emailed the data protection officer advising that the HR process had reached a decision and asking if they needed to be updated.

77. On 23 September 2024 the data protection officer requested an "update especially in relation to the use of information accessed whilst using ASSIST for an improper purpose".

78. Ann Fehilly replied advising that "following the confidential process initiated to investigate the incident, the member of staff is no longer an employee of GCC. We were led to believe that the information accessed was for personal use".

79. On 2 December 2024 the claimant's union representative Graham Hood made a separate freedom of information request. He requested information about all data breaches within all of NRS, including how many had led to investigation/disciplinary action as well as the protected characteristics of those investigated disciplined and the outcome of the disciplinary action.

80. This information was provided in an annex to a reply dated 28 January 2025. It stated that there were 36 reported NRS data breach incidents between 1 January 2022 and 1 December 2024, but that the other information requested was exempt because disclosure would involve releasing personal information about individuals, stating, "by way of explanation there are a small number of data breach cases relating to the inappropriate use of SCTS which have led to investigation/disciplinary action from which it is possible that individuals could be identified".

Comparators

81. On 16 July 2019 an employee of Glasgow Health and Social Care Partnership (HSCP) (JC) was issued with a written warning following them admitting the unauthorised access of Carefirst records, an internal database used by social work services. They were advised that "I accept the insight and reflection you gave around the circumstances and I am confident you would take a different approach if you found yourself in a similar position".

82. On 27 August 2022 118 an employee of the respondent in Social Work Services (AR) was advised that they were to be issued with a verbal warning in regard to an allegation of unauthorised access of Carefirst records. That letter states includes the following: "in considering my disposal I acknowledged that you had fully accepted that your actions were inappropriate and that you should not have accessed Carefirst Records. You have also indicated that you will not do so again in future"; and "I paid particular attention to the

mitigation presented in respect of your mental health. I noted the impact of your autism, associated anxiety and the withdrawal from prescribed medications, as well as significant relationship issues during the period leading to the incident"

83. On 20 December 2024 an employee of Glasgow HSCP (CM) was issued with a final warning for inappropriately accessing information of a service user on Carefirst without authorisation. That decision was taken on the basis that "you have reflected on your actions and assured me this will never happen in the future".

84. On 3 April 2025 an employee of Glasgow HSCP (GM) (who is white, Scottish) was advised that she was summarily dismissed, the respondent upholding an allegation that they had caused a serious data breach by sending data, which included personal and sensitive information, by e-mail externally to the council without management authorisation or the required business need. The mitigating factors were noted, with aggravating considerations including "the lack of any assurance or commitment to ensuring this would not happen again; the lack of any mitigation put forward…; the lack of any sense of remorse or understanding of your responsibility to avoid what happened". That decision was upheld on appeal.

85. On 12 February 2026 an employee of Glasgow City HSCP AM (who is white, Scottish) was dismissed for accessing Carefirst records without management authorisation or required business need and sharing personal sensitive confidential information with a service use. In that case the employee denied the allegations despite evidence presented and the decision-maker could not be satisfied that they recognised the seriousness of the breach or that the conduct would not be repeated. That decision was upheld on appeal.

Respondent's relevant policies and procedures

86. The respondent's discipline and appeals procedure states that an employee who has been dismissed may appeal by writing to the head of human resources within 14 days. It states that the Personnel Appeals Committee will hear the appeal, normally no later than one month after the appeal has been lodged, unless there are exceptional circumstances.

87. The respondent's Discipline and Appeals Procedure gives examples of gross misconduct which may lead to dismissal. It sets out a range of actions from verbal warning to dismissal without notice which will depend on the seriousness of the offence.

88. Under appeals against dismissal it states that the Personnel Appeals Committee will hear the appeal, normally no later than one month after the appeal has been lodged, unless there are exceptional circumstances.

89. The respondent's corporate HR Code of Conduct for employees states, under the heading social media that

(i) "The Council does not allow use of its computers or mobile technology to access social media for personal reasons…the sue of social media sites, email, or other online resources to post or access messages or images which are defamatory, obscene, libellous, or inappropriate will be treated as misconduct under the Code of Discipline and may lead to dismissal in cases of gross misconduct".

(ii) Employees should ensure that they do not conduct themselves in a way that is detrimental to the Council, colleagues, clients or service users either during working hours or in their personal lives when using their own equipment.

Analysis and decision

90. The issues for consideration were set out in an agreed list of issues. We considered each of the claims in turn, although there was an overlap in regard to the reason for dismissal, the claimant arguing that her dismissal was unfair and discriminatory on grounds of disability and race. We considered it appropriate to consider the discrimination claims first because the outcome of those deliberations could possibly have an impact on the unfair dismissal question.

Discrimination arising from disability: section 15 Equality Act 2010

91. The claimant argues that she has been unfavourably treated for a reason relating to her disability in terms of s.15 EqA. That states that a disabled person will be discriminated against if their employer treats them "unfavourably because of something arising in consequence of" their disability, where the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim. A claimant cannot succeed unless it is shown that the respondent knew or reasonably ought to have known that the claimant was a disabled person.

92. In this case, the respondent concedes that they knew that the claimant had the disabilities relied on (that is ADHD and Lupus).

93. There are otherwise four elements that must be made out for a claimant to succeed in a s.15 claim, identified in *Secretary of State for Justice and anor v Dunn* EAT 0234/16 per Simler P as follows:

- There must be unfavourable treatment;
- There must be something that arises in consequence of the claimant's disability;
- The unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability; and
- The alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

94. On the causation questions, in *Sheikholeslami v University of Edinburgh* 2018 IRLR 1090 EAT, Mrs Justice Simler confirmed that "this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence".

Unfavourable treatment

95. In the list of issues, the question identified for determination is first whether the respondent treated the claimant unfavourably by dismissing her.

96. Unfavourable treatment is not defined in the Equality Act. However, the EHRC Employment Code at paragraph 5.7 states that it means an employee must have been put at a disadvantage and that often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable, for example where a person is dismissed from their employment.

97. We take the view that this is one of the obvious cases and therefore that dismissal is unfavourable treatment.

There must be something that arises in consequence of the claimant's disability

98. The question for determination is whether the "something" arising in consequence of disability was "accessing the SCTS criminal online portal due to impulsive behaviour and brain fog".

99. The EHRC Employment Code states that the consequences of a disability 'include anything which is the result, effect or outcome of a disabled person's disability' (see para 5.9).

100. The correct approach to a complaint of discrimination because of something arising in consequence of disability was considered by the EAT in *Pnaiser v NHS England* [2016] IRLR 170 at paragraph 31:

"(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act…., the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in *Land Registry v Houghton* UKEAT/0149/14 a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator".

101. This was quoted recently by HHJ Tayler in *Kirby v RMG* 2025 EAT 141 where it was confirmed that "the claimant had the primary responsibility to provide evidence upon which the ET could reach a conclusion on that issue. The claimant did not provide medical evidence himself. The ET was entitled to consider the only medical evidence, the report obtained from OH by the respondent".

102. In this case, the claimant relies on the fact that her dismissal was because she accessed the SCTS COP and she says that she did that due to her impulsive behaviour and brain fog, and she says that the impulsive behaviour was due to her disability (ADHD) and that the brain fog was due to Lupus (also a conceded disability). She thus argues that there was a causal connection between her impulsive behaviour /brain fog and her dismissal.

103. Ms McFarlane submitted that there was no evidence that the claimant was suffering from brain fog and there was only a mention of Lupus at the investigation. While in cross examination the claimant said that she thought she had mentioned brain fog, there is no mention of it in the claimant's statement or in the disciplinary hearing notes, and Graham Hood did not mention it in his evidence. Ms McFarlane argued that in any event brain fog and impulsiveness appear to contradict each other; and that it was difficult to see how these symptoms could be operating at the same time.

104. She also submitted that the evidence at the disciplinary hearing regarding impulsivity was confusing: the claimant said it was planned but instantaneous; there was no evidence that impulsivity was caused by; there was no medical evidence to explain how ADHD presented itself. While the claimant said that she had referenced executive dysfunction and heart surgery during the disciplinary hearing, Mr McCulloch had no recollection of that being said.

105. We heard evidence about the claimant's explanation for what she called her impulsive behaviour, which she explained was caused by ADHD. Sean Hanlon notes in his investigation report that the claimant said that "an impulsive decision such as this can be linked to the condition". The matter was raised by the claimant and by her trade union.

106. We heard evidence that during the disciplinary hearing this had been raised by Mr Hood but what he said is not recorded; although what the claimant went on to say was recorded, and that is she explained the "impulsiveness" caused by ADHD as "wanting to get from A to B as quickly as possible, and not fully thinking through the consequences".

107. We heard evidence too from Mr McCulloch that he did not accept that the claimant had acted impulsively, primarily because he found that the act was planned and premeditated. While he conceded he did not have much understanding of the condition of ADHD, and said that he did not hear much about that in the hearing, he did not consider that any medical evidence was required because he did not accept that the act was impulsive; so there was no reason for him to find out if impulsivity was related to the condition of ADHD.

108. While we were concerned about the paucity of the handwritten notes taken during the disciplinary hearing, that these were not typed up and that no official record of them was made, what is clear is that there was no expert evidence to support the claimant's contention. Mr McCulloch did not consider that it was required and no request was made for the respondent or indeed the claimant to obtain such evidence.

109. We were aware, given the decision of the Court of Appeal in City of *York v Grosset* 2018 ICR 1492, that where an employer dismisses a disabled employee for misconduct caused by disability, the dismissal can amount to discrimination under section 15 even if the employer did not know that the disability caused the misconduct. In that case, the claimant was dismissed for misconduct which he said was an error of judgment arising from stress. The Court of Appeal upheld the decision of the employment tribunal that although the employer was unaware at the time of dismissal that the claimant's misconduct was linked to his disability, the tribunal was satisfied that there was such a link, lack of knowledge of the consequences being no defence. That link was established on the basis of medical evidence that had not been available to the respondent at the time.

110. The real difficulty for the claimant in this case is that there is no medical evidence to support the claimant's claim that her impulsivity and brain fog, as manifested here, arose in consequence of her disability. There is no medical evidence to support the claimant's explanation about how impulsivity manifests itself for those with ADHD. We have only the claimant's evidence, and indications from Mr Hood, about whether the impulsivity arose as a consequence of the claimant's ADHD and the brain fog as a result of her Lupus.

111. This is certainly not something which is within judicial knowledge. We were generally aware that impulsivity could be associated with ADHD, and we could understand that once

the claimant had made the (impulsive) decision to do something, that she might be determined to carry it through, but that would not be a standard understanding of acting on impulse. We noted too that the claimant did not let anyone know afterwards that she had accessed the database as she might have done, and it was not discovered until the audit by Ms Gardner. Mr McCulloch came to the view that the action was not impulsive but premeditated and without expert evidence this would accord with the standard understanding of impulsivity. We were not aware that the actions of the claimant, whether impulsive or otherwise, could be associated with or a symptom of ADHD, which we accepted might be different for her as an individual. We understood too that symptoms of ADHD might manifest when an individual is under pressure, and we did hear that the claimant was generally coping with a lot of commitments, but we did not hear that there was anything particular about that day that might have explained her actions.

112. This indicates that the claimant would have been expected to produce medical evidence to support such a conclusion if not at the disciplinary hearing, then at the appeal hearing. Nor was there any medical evidence submitted at this hearing to seek to establish the link. Without medical evidence, it was not possible for us to say that these actions would likely be caused by the claimant's conditions.

113. We could not therefore say that the relevant "something" here, namely the impulsivity and the brain fog, arose in consequence of the claimant's disability because there was no evidence, beyond the claimant's, to support such a conclusion, or to establish any link between her actions and her disability.

114. Accordingly, we have found that the claimant has not established that the something arose in consequence of her disability, so that she fails to establish a breach of section 15.

115. In the event that it is said that the claimant has in fact established that, we went on to consider the other limbs of the test.

The unfavourable treatment (dismissal) must be because of (i.e. caused by) the something that arises in consequence of the disability

116. Even if the claimant could have established that the impulsivity and brain fog arose as a consequence of her disability, and that she accessed the database as a consequence of a symptom of her disability, it must be established that the reason the claimant was dismissed was her disability. There must be an inquiry into the respondent's "thought processes" to ascertain whether the 'something' that is identified as having arisen as a consequence of that claimant's disability formed any part of the reason for the unfavourable treatment.

117. It is thus appropriate to enquire into the employer's thought processes when considering whether the necessary causal link is established. The key question is whether the

something arising in consequence of the disability operated on the mind of the alleged discriminator, consciously or unconsciously, to a significant extent.

118. In *Pnaiser v NHS England and another* 2016 IRLR 170, Simler P. confirmed that there may be more than one reason for the treatment, and further that the “something” that causes the unfavourable treatment need not be the main or sole reason. Rather, it must at least have a significant (or more than trivial) influence on the unfavourable treatment, and to amount to an effective reason for or cause of it.

119. Thus we went on to consider whether the unfavourable treatment was because of the “something”, namely accessing the COP.

120. Ms Macfarlane argued, when it came to the causation question, the claimant was not dismissed because of the something; because it was not accepted that it was an impulsive decision; but rather that it was planned; because the claimant had to have the fiscal’s reference number and the claimant knew that she could have phoned the court but would have to wait 45 minutes; in these circumstances Mr McCulloch did not consider that it was necessary to get medical evidence; neither the claimant nor her trade union representative presented any medical evidence and they did not ask for an adjournment to allow them to do so.

121. We heard that the respondent’s decision to dismiss was because the claimant had accessed the COP inappropriately and that it was not because of impulsivity because the respondent did not accept that the claimant had on this occasion been impulsive. The claimant was dismissed for unauthorised access of the COP which was the reason she was dismissed, and there was no evidence to show that it arose in consequence of her disability.

The alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim (objective justification).

122. If we were to have concluded that the claimant was subjected to unfavourable treatment because of something arising from her disability, the claimant would not inevitably succeed because the respondent argues in this case that dismissal in the circumstances was a proportionate means of achieving a legitimate aim.

123. The established test for determining objective justification (considered in relation to indirect discrimination) is derived from the decision of *Bilka-Kaufaus v Weber Von Hartz* 1987 ICR 110, where the ECJ held that, to justify an objective which has a discriminatory effect, an employer must show that the means chosen for achieving that objective: correspond to a real need on the part of the undertaking; are appropriate with a view to achieving the objective in question; and are necessary to that end.

124. This was developed at the domestic level, and the Court of Appeal in the case of *Hampson v Department of Education* 1989 ICR 179 stated that the test involves the need to strike "an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition".

125. There is no question that the burden of proof sits with the employer. At paragraph 4.26 of the EHRC Employment Code of Practice, it is stated that an employer must produce evidence to support their position and that generalisations will not be sufficient. That does not mean that there requires to be concrete evidence but objective justification may be established in an appropriate case by reasoned and rational judgement, but not by subjective impression or stereotyped assumptions.

126. Ms Macfarlane argues that even if the Tribunal finds that the claimant did access the database because of impulsivity arising from disability, that dismissal was justifiable in the circumstances. That is because the respondent must have trust and confidence that employees will access COP in accordance with the data sharing agreement with SCTS. It was essential for the operational requirements of ASSIST, she argued, to retain ongoing access to COP and therefore there was a need to mitigate the risk of the withdrawal of access which would impact on the department's ability to fulfil their roles. Here the decision maker had no confidence that the claimant would not do it again so there was a risk that would happen. In particular, Mr McCulloch did not consider that the claimant understood the risks for the respondent, SCTS and the data sharing agreement. She argued that dismissal was a proportionate response in circumstances involving unauthorised access.

127. In this case the effect on the claimant could not have landed more heavily, since she was dismissed and has lost her job. However, we appreciate in this case that the arrangement with SCTS regarding access to their database is essential for the efficient operation of their service. We accepted that the risk of breaching that agreement meant that is was possible that SCTS would withdraw the right to access it. We accepted that the respondent must have trust and confidence in employees such that they would not access the database inappropriately. The claimant said that she acted impulsively but if that were correct there was no medical evidence to suggest that it might not happen again. We accept that a solution suggested by the claimant that other colleagues could access the database for her was unworkable.

128. Accordingly, we have come to the view that, balancing the needs of the employer with the discriminatory effect on the claimant, given the aims which the respondent sought to achieve, dismissal in the circumstances was objectively justifiable.

129. Thus even if the claimant had been able to establish unfavourable treatment arising in consequence of disability, the respondent has shown that the treatment was a proportionate means of achieving a legitimate aim, so that claim must be dismissed.

Direct race discrimination

130. The claimant relies on a number of incidents which she argues amount to direct race discrimination.

131. Section 13(1) of the Equality Act 2010 states that “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”. Race is a relevant protected characteristic. Section 9 states that race includes colour, nationality and ethnic or national origins.

132. Section 23(1) of the Equality Act 2010 states that “On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case”.

133. Thus in order to establish direct race discrimination, a claimant requires to show less favourable treatment in comparison with others in similar circumstances because of race.

134. In making that assessment the claimant usually requires to point to an actual or hypothetical comparator in the same material circumstances as the claimant.

135. In this case, the claimant relies on a number of actual comparators to seek to establish that she has been less favourably treated, namely Geniveive Littauer-Dolan, and three white employees with initials AR, CM and JC. However she also relies on hypothetical white comparators in seeking to establish a number of her claims.

136. It is not in any event sufficient for the claimant to show less favourable treatment and a difference of race, because the claimant must also establish a causative link between the protected characteristic and any less favourable treatment. This is thus a two stage test, with the claimant being required to establish less favourable treatment and then that any less favourable treatment was because of race.

137. It has long been recognised that, although the burden of proving discrimination rests with the claimant, the information which might prove that is likely to be in the hands of the respondent, and since they are unlikely to admit discrimination (even to themselves), it can be difficult for claimants to prove discrimination. For that reason, the concept of the shifting burden of proof was introduced.

138. Section 136(2) of the Equality Act 2010 states that “if there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the

provision concerned, the court must hold that the contravention occurred…but [that] does not apply if [the person] shows that [they] did not contravene [that] provision".

139. This shifting burden of proof involves a two stage analysis: first the claimant must prove, on the balance of probabilities, facts which might lead to an inference of discrimination (i.e. establish a prima facie case). It is appropriate to consider all the evidence at that first stage, not only that adduced by the claimant (*Efobi v RMG* 2021 ICR 1263). If a prima facie case is established, the respondent must in turn prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the protected ground. The Tribunal should take account of the revised Barton Guidance (*Igen v Wong* 2005 EWCA Civ 142), which confirms that the tribunal should expect to hear cogent evidence from the respondent to discharge that burden, given they are liked to be in possession of the relevant information.

140. Nor is it sufficient for a claimant to show simply less favourable treatment and a difference of race to shift the burden. "Something more" than a mere finding of less favourable treatment compared with someone without the claimant's protected characteristic is required before the burden of proof will shift (*Madarassy v Nomura International plc* 2007 ICR 867 CA). The "more" required need not be a great deal (*Denman v EHRC* 2010 EWCA Civ 1279).

141. We accordingly gave consideration to whether the claimant has proved sufficient primary or secondary facts which would lead us to draw inferences that there was less favourable treatment and which are capable of shifting the burden of proof.

142. We first considered whether there was any conduct which amounted to less favourable treatment, which is essentially detriment or disadvantage.

143. The claimant argues that the following incidents amount to less favourable treatment. The first question to address however is whether these incidents occurred or not. Then the question is whether the treatment was or was not less favourable by comparison to actual or hypothetical comparators.

144. The claimant makes certain allegations about Ms Gardner. In particular the claimant alleges that she experienced certain treatment from Ms Gardner when asking about valuing diversity training during several support and supervision sessions. The claimant describes this treatment as "microaggressions". We understand that to mean everyday comments or behaviours whether intentional or otherwise which indicate hostile or negative attitudes towards those who share a protected characteristic including people of colour. In our analysis of these allegations we have however set that categorisation aside in the first instance, and gave consideration to whether these allegations are established on the evidence; and then whether it could be said that they were "less favourable".

145. We considered therefore whether in the support and supervision sessions, Monica Gardner did the following (retaining the numbering from the list of issues) and if so whether it could be said to be less favourable treatment.

26 tutting and sighing in frustration and/or exacerbation.

146. We do not accept that the evidence supported the claimant's characterisation of Monica Gardner's reaction to the claimant's raising her concerns about the training. Ms Gardner's evidence was that she would not behave in such a way, and we accepted that because we found that she gave her evidence in a matter-of-fact style, indicating a professional approach to her work and responsibilities. This allegation is not established.

27 advising her to contact Ann Fehilly, Head of Service.

147. We accept that the claimant was asked to contact Ann Fehilly. We do not however accept that this can be categorised as "less favourable treatment" given the circumstances, because we accepted that in similar circumstances Ms Gardner would have asked others to do the same. The claimant suggested that she was intimidated by the need to contact the head of service. She expressed concern about having to contact her managers, manager's manager (as we understood it) which she said was unusual. However we considered that the circumstances here were unusual where this related an agreement about training which stemmed from the judicial mediation. Here the claimant's manager and her manager were not party to the agreement reached, but since Ann Fehilly had attended the judicial mediation so was in the know about that. Further, as was pointed out in evidence, the claimant was otherwise apparently quite content to approach Ann Fehilly having done so before at her own suggestion. We do not accept that this was a detriment or a disadvantage or less favourable treatment.

28. Saying she didn't see the need for valuing diversity training nor did she want to discuss her belief systems during training

148. Monica Gardner said that she did not recall saying that but did not believe that she would have said it because she believed that all training was appreciated and valuable. We did note that she was happy to allow the claimant to go on a four-day training course of her choice. She did not recall saying that she would not want to discuss her belief systems during training. However she said that it was true that she would not want to discuss her beliefs at work; did not see the need to do that in training; but if she had to she would.

149. Given these nuanced answers, we accepted Ms Gardner's evidence, but in any event she said that she would say the same thing to any colleague who asked and we would not categorise this as less favourable treatment.

29. saying, in response to the claimant complaint that Genevieve Littauer-Dolan had posted islamophobia online, that that people are entitled to their opinions outside work Genevieve Littauer-Dolan (being her comparator and/or hypothetical comparator)

150. Ms Gardner's evidence in regard to this matter was that she did say, in response to the claimant's complaint that what Ms Littaurer-Dolan had said was Islamaphobic, that people are entitled to their opinions and that she would say that to anyone.

151. It is apparent that having said that, and even if she had said that people are entitled to their opinions outside work, that she would have said this to another colleague in similar circumstances. Accordingly this should not be classified as less favourable treatment.

30. denying that Assist or GCC monitored social media posts

152. Again Ms Gardner did not recall saying this, but said that she may well have said it because so far as she is aware the respondent does not monitor social media posts. This is simply Ms Gardner stating a fact, which we accept she would have said to other colleagues, and cannot of itself be categorised as less favourable treatment.

31 call to ask the claimant to send her an email because she had made serious allegations

153. We have found that Monica Gardner did ask the claimant to send an email setting out her allegations. We noted that this was after Ms Gardner had taken advice from her manager and HR. We heard evidence that both the claimant and Ms Littauer-Dolan were asked to send in a complaint to HR if either wanted their complaints to be taken forward, but we understand that no such complaint was submitted.

154. We accept that this request would have been made of any member of staff in similar circumstances. We accordingly accept that this was done but we do not accept that it was less favourable treatment.

32 Did Monica Gardner not follow HR advice for Genevieve Littauer-Dolan online posts (comparator Genevieve Littauer-Dolan)

155. As we understood the evidence, after the claimant raised her concerns about an online post which she had seen on Ms Littauer-Dolan's social media, Ms Gardner took the advice of her line manager. They then had a meeting with HR, who advised her that she should ask the claimant to put her complaint in writing to her, which she did and also that she would have to make a complaint to HR for any further action to be taken. Accordingly this allegation has not been established.

156. In any event, we heard that Ms Littauer-Dolan was likewise advised that for further action to be taken she would need to make a complaint to HR, but she did not do so.

33. Did management follow policy for the claimant's transgression but ignore policy for Genevieve Littauer-Dolan's social media posts? (comparator Genevieve Littauer-Dolan).

157. As we understand this allegation, the claimant complains that when she made a transgression, that is when she breached the rules about accessing the SCTS database, she was suspended and investigated whereas when Ms Littauer-Dolan allegedly breached the employee code of conduct, she was not investigated or disciplined.

158. It is correct to say that disciplinary procedures were followed in respect of the claimant's conduct. It is not correct however to say that the respondent "ignored" policy in regard to Ms Littauer-Dolan's social media posts. We find this allegation is not established.

159. The circumstances were in any event quite different. In particular, the claimant did not make any formal complaint about the social media posts. These were posts which were done outside work. Management was not aware of their content. Further, the fact that the respondent's code of conduct sets out acceptable conduct in the use of social media does not equate with the circumstances surrounding the investigation into the claimant's breach of the data sharing agreement with SCTS.

34. Was the claimant dismissed for causing a data breach by accessing a court record without authority (claimant's comparators are three white employees, AR CM and JC).

160. The reason given by the respondent for dismissal was because the claimant had caused a data breach by accessing a court record without authority. Clearly that is less favourable treatment than others who were not dismissed.

161. The claimant alleges however that this is because of race, that she was treated less favourably than white comparators, actual or hypothetical.

162. As discussed above, to support the contention that there has been less favourable treatment, any comparator must be in the same material circumstances.

163. The claimant argues that she was less favourably treated than hypothetical comparators who were in the same material circumstances. Ms McFarlane set out who she thought would be the correct hypothetical comparator in this case and accept that that comparators in the same material circumstances (who had accessed a court record without authority) would have been treated the same.

164. The claimant also relies on actual comparators. She relies on a comparison with the treatment of Ms Littauer-Dolan. However, it cannot be said that she was in the same material circumstances, because there was no allegation that she had breached the respondent's data sharing agreement, nor indeed that she had breached any policy at all (including the code of conduct). Even if it could be said that she had made Islamophobic posts, the claimant was asked to put the allegation in writing to HR and she did not do so.

What it seems the claimant did not know is that Ms Littauer-Dolan was also asked to put her concerns in writing and that she did not.

165. The claimant has equated in her mind the fact that she was investigated according to procedures where it was believed that she had breached procedures but that Ms Littauer-Dolan was not investigated in the same way. It is clear that the circumstances of the two were very different and it cannot be said that she was an appropriate comparator for the claimant's claim of race discrimination, because the difference in their circumstances is material.

166. The claimant also relied on three named comparators, all of whom are white Scottish. We heard evidence from Mr Graham, who was their trade union representative at their disciplinary hearing, and the outcome letters relating to their disciplinary hearings were lodged. The argument advanced was that none of these comparators had been dismissed, but their sanctions had been short of dismissal, that is a verbal or written warning.

167. Again, it is clear that the comparators which the claimant seeks to rely on were not in the same material circumstances. Generally the disciplinary action faced by these comparators related to improper use of CareFirst. This is an internal database used by the social work division. The fact that the database which the claimant accessed inappropriately was an external database with a data sharing agreement we consider to be a material circumstance which means that the circumstances of the claimant and her comparators are not sufficiently similar to afford appropriate comparison. That in itself was a material difference between the cases, but there were other factors which were relied on too in regard to mitigation and contrition.

168. Further, the respondent led evidence about two white Scottish comparators who were dismissed in similar circumstances. Again it could be argued that they were not in the same material circumstances, but they were relied on to support the respondent's argument – in regard also to the unfair dismissal claim – that dismissal was not because of race but for another reason.

169. It should be noted that we also heard evidence under reservation about the claimant's freedom of information request, which related to a response from the respondent that there had been 36 reported NRS data breach incidents between 1 January 2022 and 1 December 2024. Ms Macfarlane rightly objected to evidence being led about this because the Employment Judge had refused an amendment which would have included this detail.

170. Although when the judge decided that the claimant's amendment should not be allowed, she was not fully aware of all the circumstances around that as explained by the claimant, her decision was based on the fact that producing the details of an additional 33 individuals would be disproportionate. As we now understand it however, none of these

data breaches related to a breach of the data sharing agreement with SCTS, which means that the circumstances would in any event have been different. We relied in particular on the evidence of Ann Fehilly who had been the group manager since 2018. She said that since then there was no other instance where an employee had been involved in a data breach of that particular database, which she emphasised was an external database with a data sharing agreement with a third party.

171. We were therefore confident in concluding that there were no comparators in the same material circumstances as the claimant who were of a different race and who were not dismissed.

172. An alternative approach to test this question and to avoid the focus on comparators, is simply to ask the reason why the claimant was treated as she was. The decision of the House of Lords in *Shamoon v RUC* tells us that, especially when there is a dispute the identity of comparators, we do not require to first consider the less favourable treatment question, because we can move to consider “the reason why” question – that is what was the reason for the treatment, here the question is why was the claimant was dismissed. The answer to that may well show that the reason for the treatment was not race, otherwise it may point to the only reason for the treatment being race.

173. The respondent’s evidence about why the claimant was dismissed was clear. It relates specifically to the accessing an external database in breach of an information sharing protocol.

174. Even approaching the question from the point of view of the shifting burden of proof, we consider that there was no evidence in this case to support any inference that the burden of proof should shift to the employer. Even if there was less favourable treatment, the fact of less favourable treatment and a difference of race is not sufficient to shift the burden. There has to be “something more” (*Madarassy*). That does not require to be much (*Denman*), but it does require to be a fact which supports suspicions that the reason for the treatment is race.

175. The claimant has not advanced any evidence at all that would suggest that the reason for any of her treatment was her race, beyond her general concerns about unconscious bias.

176. The claimant expressed particular concerns about that and we accept generally her propositions around unconscious bias and the fact that we all may act on biases that we are not necessarily aware of. We accept generally that equality and diversity training, which was to take place in person, would have been valuable for the department. We accept that the claimant was aggrieved that she, as the only black person in the department, was the one who had to press for that. She believed that the respondent’s response to her legitimate request for training (agreed as an outcome of the judicial

mediation) were more about satisfying her request for training and not about the need for or importance of the training itself.

177. However, none of this is sufficient to count as primary or even secondary facts to shift the burden of proof.

178. Even if there had been facts to shift the burden of proof, we find that the respondent has established that the reason for the claimant's treatment was nothing whatsoever to do with race. That is because as set out above, the reason the claimant was dismissed was because of her admitted unauthorised access to an external database in breach of a data sharing agreement. The claim for race discrimination must also be dismissed.

Victimisation: section 27 Equality Act 2010

179. Section 27 EqA, headed up victimisation, states that "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". Protected acts include "Bringing proceedings under this Act" and "doing any other thing for the purposes of or in connection with this Act".

180. Thus a claimant seeking to establish victimisation will require to show:
- that they have done a protected act;
- that they have been subjected to a detriment; and
- that they were subjected to that detriment because of the protected act.

181. Detriment is not defined in the Equality Act but the EHRC code of practice at paras 9.8 and 9.9, makes it clear that it covers a wide range of conduct and treatment, essentially anything which a claimant might reasonably consider puts them a disadvantage, although an unjustified sense of grievance will not be enough.

182. On the question whether the claimant was subjected to the detriment "because of" the protected act, as with direct discrimination, the essential question is what, consciously or subconsciously, motivated the employer to subject the claimant to the detriment. This generally requires consideration of the mental process of the employer, ie did the doing of the protected act have a significant influence on the employer's decision; it is not necessary for the protected act to be the primary reason for the treatment, so long as it is a significant factor (*Najarajan v London Regional Transport* 1999 ICR 877).

183. Self-evidently, detriment cannot be because of a protected act where the person who inflicted the detriment did not know about the protected act (*Scott v London Borough of Hillingdon* 2001 EWCA Civ 2022).

184. We turned to consider the allegations and questions set out in the list of issues, in respect of which we have retained the numbering.

12. Did the claimant do a protected act?

185. The claimant relies on the following as protected acts:
   a. Disability discrimination claim which the claimant brought against the respondent in 2023; and
   b. The claimant's complaint of alleged race discrimination against her colleague Genevieve Littauer-Dolan.

186. The respondent accepts (a) but not (b). Ms Macfarlane pointed out that the claimant's complaint about her colleague Genevieve Littauer-Dolan was a complaint about alleged religious discrimination (relating to Islamophobia) and not a complaint of race discrimination. We took the view that was not fatal to the categorisation of this as a protected act, which relates to a claimant's conduct and not to their protected characteristics.

187. The question is whether this complaint could be said to amount to a protected act. In *Kokomane v Boots* 2025 EAT 38, the EAT held that there was no requirement to mention that the conduct amounted to discrimination, the only requirement being that the facts asserted are capable in law of amounting to an act of discrimination. Thus the tribunal needs to consider how the information provided by the employee would be understood by the employer in context.

188. Accordingly a claimant need not refer specifically to the Equality Act, need not say that the conduct amounted to discrimination, and need not refer specifically to the protected characteristic in order to establish a protected act. All that is required is that the facts asserted by the claimant must be capable in law of amounting to an act of discrimination.

189. Here the complaint is one of "Islamophobia". That complaint was made to the claimant's line manager, Ms Gardner (although not to HR). Although we did not hear details about what was posted, and we were aware that the post was made outside the work context, we accept that the claimant was making a complaint about behaviour which may be contrary to the Equality Act and that such an accusation may well be capable in certain circumstances of amounting to an act of discrimination.

190. Accordingly, we accept that both of these actions amount to protected acts. The first was in November 2023, and the second in April 2024. Strictly speaking the claimant should identify which of the alleged detriments is linked to which protected act, but we understood that the claimant alleges that each of the detriments resulted from both of the protected acts.

Detriments alleged

191. The claimant relies on a number of incidents which she says amount to detriments, some of which are accepted as such by the respondent and others not.

192. We considered each incident alleged, whether it was established, if so whether it could be categorised as a detriment, and if so whether it could be said that the claimant was subjected to any detriments because she had carried out the protected acts (24 and 25 of the list of issues). Those incidents are considered in turn, using the numbering from the list of issues for ease of reference.

13. Did the claimant experience micro-aggressions by Monica Gardner

193. The claimant described a number of actions by Monica Gardner as “micro-aggressions”, some actions/conduct being admitted and others which were not. We have discussed our conclusions about this above and accordingly do not accept this allegation is made out.

14. Did the claimant ask about valuing diversity training?

194. This is accepted by the respondent, and it is clear from the evidence that the claimant did ask a number of colleagues on a number of occasions about valuing diversity training.

195. As this is accepted and something which is done by the claimant it cannot be said to amount to a detriment.

15. Was the claimant told to contact the Head of Service about Training

196. The respondent accepts this and it is clear from the evidence that the claimant was told to contact Ann Fehilly. The claimant considered this to be a detriment because she was being required, when it came to implementing diversity training, to take the matter to a more senior person that was the norm when it came to training. She was aggrieved in particular because she thought the onus was being put on her, as a black person, to ensure that the diversity and inclusion training happened. She suggested that she found it intimidating to have to contact her head of service, although as Ms McFarlane pointed out, the claimant appeared comfortable with Ms Fehilly and had previously been content to contact her regarding other adjustments which were apparently agreed at judicial mediation.

197. We did not accept that this was a detriment, but even if this can be said to be a detriment, we do not accept that this was done “because of” any protected act. We heard evidence that the reason she was asked to contact the head of service was because Ms Gardner was not party to the agreement and it was Ms Fehilly who had attended the judicial mediation and who knew something of the training.

16. Was the claimant told by Monica Gardner that her complaint about Islamophobia was a serious allegation

198. Ms Gardner accepted that the complaint was a serious allegation. However, the fact of Ms Gardner telling the claimant that it was a serious allegation does not support the contention that this was a detriment.

17. Was the claimant advised by email by Monica Gardner about raising a personal complaint?

199. We have found that the claimant was requested to send an email setting out her complaint. We do not consider that to be a detriment.

18. Did Monica Gardner defend Genevieve Littauer-Dolan's statement to the claimant that she "was completely wrong" by saying that she did not mean it and suggest that this may have escalated due to their personal disagreement?

200. In fact what was said by Ms Littauer-Dolan was "I completely disagree". We heard no evidence that this was said by Ms Gardner. The claimant did not put this to Ms Gardner in cross examination. This is not therefore established so cannot amount to a detriment.

19. Did Monica Gardner fail to acknowledge that Genevieve Littauer-Dolan was not following the agreement that communications between the claimant and the lead advocacy workers would be through a phone call for complex cases.

201. There was clearly a dispute here about what agreement had been reached. It may well be that there was a misunderstanding. However, Ms Gardner's understanding of the agreement reached with the claimant when she was first diagnosed with ADHD was that there would be a follow up e-mail on the first intake, not that all communications in complex cases would be by e-mail. She accordingly did not agree that Ms Littauer-Dolan was not following the agreement reached. We find that this had not been established.

20. Was the claimant being monitored more closely than her colleagues in the lead up to the disciplinary investigation.

202. The claimant was suspended from 6 August, so Ms McFarlane made the point that she was not at work in the lead up to the disciplinary investigation so she could not have been monitored more closely.

203. The claimant came to the view then that prior to that she was being monitored more closely than colleagues. However, we have concluded that there is no evidence to support such a view. This allegation may relate to the claimant's apparent misunderstanding about the auditing process. However, the evidence was clear that there was a requirement for managers to undertake an audit of database usage to comply with the requirements of

the data sharing agreement with SCTS. This was done prior to each support and supervision session, and the clients audited recorded on the notes of the meeting, a copy of which was sent to the claimant. It was through this route that Ms Gardner became aware of the data breach.

21. Was there a search of the claimant's computer to find information to use to discipline her?

204. As above, it appears that the claimant was not aware of or misunderstood the audit process. The evidence about that was quite clear. Ms Gardner came upon the information about the claimant having accessed the database through a legitimate audit.

22. Was the claimant suspended?

205. This is accepted and agreed. Clearly suspension is a detriment. The focus then is on the reason for the suspension. The claimant says it was because she did a protected act. It is clear however that the reason the claimant was suspended was because of the information which had been obtained about her relating to her access the database inappropriately.

206. There is no evidence which could support any inference that the reason why the claimant was suspended was because of the previous employment tribunal claim or the fact she had made a complaint about Ms Littauer-Dolan. There is nothing to suggest that formed any part of the reason to suspend her.

23. Was the claimant dismissed?

207. There is no dispute about this, and accordingly this is established. The question then is whether it was because she did a protected act. There is however no evidence to support such a conclusion. There are no facts which we have found, primary or secondary, which would support any suggestion that the reason that the claimant was dismissed because she had previously raised an employment tribunal claim or because she complained to Ms Gardner about Ms Littauer-Dolan's post.

208. It is clear that the claimant was dismissed for other reasons. Whether dismissal was fair in the circumstances is another matter, which we now turn to consider. The victimisation claim is now however established, so is dismissed.

Unfair dismissal

209. The law in relation to unfair dismissal is contained in the Employment Rights Act 1996 (ERA). Section 98(1) provides that, in determining whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason for dismissal and, if more than one, the principal one, and that it is a reason falling within s.98(2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the

position which the employee held. Conduct is one of these potentially fair reasons for dismissal.

210. Section 98(4) provides that where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair, having regard to the reason shown by the employer, depends on whether, in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal and this is to be determined in accordance with equity and the substantial merits of the case.

211. In a dismissal for misconduct, in *British Homes Stores Ltd v Burchell* [1980] ICR 303, the EAT held that the employer must show that: he believed the employee was guilty of misconduct; he had in his mind reasonable grounds upon which to sustain that belief; and at the stage at which he formed that belief on those grounds, he had carried out as much investigation into the matter as was reasonable in the circumstances.

212. In considering the reasonableness or unreasonableness of the dismissal the Tribunal must consider whether the procedure followed as well as the penalty of dismissal were within the band of reasonable responses (*Iceland Frozen Foods Ltd –v- Jones* [1982] IRLR 439). The Court of Appeal has held that the range of reasonable responses test applies in a conduct case both to the decision to dismiss and to the procedure by which that decision was reached (*Sainsbury v Hitt* 2003 IRLR 23). The relevant question is whether the procedure falls within the range of reasonable responses that a reasonable employer might have adopted.

Genuine belief in misconduct

213. It is not in dispute that the claimant was dismissed and the respondent relies on conduct as the reason. In assessing whether a dismissal for gross misconduct is fair or unfair, we must consider each element of the Burchell test, set out above. The first limb of the *Burchell* test requires the employer to show that they believed that the employee was guilty of misconduct. It is clear that the claimant was dismissed for misconduct for accessing the SCTS database in breach of the agreement with them, which the claimant admitted, and that the respondent genuinely believed that she was guilty of misconduct.

Reasonableness of decision to dismiss

214. The key question for the Tribunal is of course whether the respondent acted reasonably in dismissing the claimant for misconduct. The question is whether it was reasonable in all the circumstances for the respondent to dismiss the claimant for misconduct, and not whether this Tribunal would have dismissed the claimant in these circumstances, there being a range of reasonable responses open to the respondent.

Reasonable grounds for belief following a reasonable investigation

215. When deciding whether or not dismissal was reasonable in all the circumstances, the second and third limb of the Burchell test must be considered. These tests tend to overlap and accordingly we have considered them together. We considered therefore whether or not the respondent had in mind reasonable grounds upon which to sustain the belief that the claimant was guilty of misconduct following a reasonable investigation.

216. It should be borne in mind in this case that the claimant admitted to accessing the SCTS database inappropriately and in breach of the data sharing agreement.

217. That in itself means that the respondent had reasonable grounds to sustain their belief that the claimant was guilty of misconduct. The claimant had a number of concerns about the information which the respondent had before making that decision, but we take the view that the concerns that the claimant had related to the respondent's decision to find the claimant guilty of misconduct which justified dismissal. Accordingly, we turned to the question whether the sanction of dismissal was reasonable in the circumstances, which was the focus of our deliberations.

Reasonableness of the sanction of dismissal

218. We considered whether the sanction of dismissal was reasonable in all the circumstances, having regard to equity and the merits of the case, and the size and administrative resources of the respondent.

219. Ms Macfarlane argued that that dismissal was justifiable in the circumstances. That is because the respondent must have trust and confidence that employees will access COP in accordance with the data sharing agreement with SCTS. It was essential for the operational requirements of ASSIST, she argued, to retain ongoing access to COP and therefore there was a need to mitigate the risk of the withdrawal of access which would impact on the department's ability to fulfil their roles. Here the decision maker had no confidence that the claimant would not do it again so there was a risk that would happen. In particular, Mr McCulloch did not consider that the claimant understood the risks for the respondent, SCTS and the data sharing agreement. She argued that dismissal was a proportionate response in circumstances involving unauthorised access.

220. The claimant argued that dismissal was not appropriate in the circumstances, that the sanction of dismissal was too severe. She said that she was not expecting to be dismissed; that she was expecting a warning; and that her trade union representative had led her to believe that she would get a warning; and this was based on how others in a similar situation were treated. She said that she had been open and honest about the data breach and that the information was used for personal purposes and was not shared with

anyone else. She said that she had understood how serious it was and that she had been contrite.

221. The claimant was also concerned that the respondent had failed to fully take account of mitigating factors. In particular, the claimant had at that time a lot to juggle in her work and home life. Her decision that day to access the database was due to expediency and impulsivity and brain fog. She said the impulsivity and brain fog were related to her disability. The claimant's position was that Mr McCulloch did not understand how "impulsivity" manifested itself for those with ADHD. The claimant was of the view that the respondent should have taken steps to establish whether the impulsivity which she said explained her actions was caused by her disability before making the decision to dismiss.

222. We have concluded above that there is no breach of section 15 in this case so the actions of the employer do not amount to disability discrimination. Had we found a breach, then it is highly likely that dismissal would have been unfair in the circumstances. However, the claimant suggests that Mr McCulloch should have undertaken more inquiry into the condition of ADHD to better understand whether her actions could be explained by her condition before making his decision. We heard evidence from Mr Hood that after a recess during the disciplinary hearing he had explained how impulsivity is associated with ADHD. We were concerned to see that this was not noted in the disciplinary hearing notes which were sparce and unofficial. However, we accepted Mr Hood's evidence that he had discussed it; and that the claimant had discussed it later in the hearing as was noted. However, Mr McCulloch's evidence was that he did not accept that she had acted impulsively, and that her actions were planned and premeditated, confirmed by the fact that she needed to have the fiscal reference number to access the database.

223. The difficulty for the claimant is that if she wanted to show a) that her actions were impulsive as she defined them b) that this was a symptom of ADHD and/or c) that her actions whether categorised as "impulsive" or not were related to her disability, then she would have needed medical evidence to support such a submission.

224. While as a Tribunal we generally accepted that impulsivity is a characteristic of ADHD, we could not say in the circumstances that the failure to be further informed about any links between ADHD and impulsivity when Mr McCulloch concluded that the claimant's actions were not impulsive meant, given the information available to the respondent, that dismissal was unfair.

225. We came to that view because of the seriousness with which a breach of the agreement was taken by the respondent, and the potential consequences for them, as discussed above in regard to the objective justifications which the respondent had for their decision.

226. The claimant also believed that the respondent should have taken account of the views of SCTS regarding the data breach. She asserted that the information obtained should

have been forwarded to Mr Hanlon and the outcome reported. She complained that Mr McCulloch should have ascertained the position of SCTS in relation to the breach and taken that into account before making his decision to dismiss.

227. In his investigation report Mr Hanlon noted that the respondent was waiting for subsequent actions to be determined by SCTS. However, we have now heard that the respondent already knew the view of SCTS to the extent that they stated that “whilst not an SCTS breach” they were seeking further information. This information was neither passed on nor it seems sought out by Mr Hanlon or Mr McCulloch.

228. Although Mr Hanlon did not give evidence so could not be cross examined, there was no indication that he did know about that correspondence and deliberately did not include it in his report.

229. We did hear evidence from Mr McCulloch and his position was that he did not know what SCTS’s view of the data breach was; that he did not take any steps to find out; but that he was of the view that he did not need to know their view of the data breach to allow him to make his decision; and that even if he had known SCTS’s view then that would have had no bearing on his decision because he was basing his decision on the respondent’s policies and procedures.

230. The claimant apparently relied on the statement that the SCTS did not consider it a breach. We were not quite sure what was meant by “whilst not an SCTS breach” in their email, whether this might mean that they did not consider what the claimant had done to be a breach, or whether they did not consider it to be a breach of the agreement with the respondent, or whether it might mean that it was not a breach by SCTS personnel.

231. While it is unfortunate that the information obtained in the exchange with SCTS and other council departments was not fed into the investigation, we accept that there was no deliberate intention to hold that information back. Further, we accept that the respondent’s focus on their own disciplinary policies and their position that the view of SCTS was not ultimately relevant was a reasonable position to take.

232. We appreciate in this case that the arrangement with SCTS regarding access to their database is essential for the efficient operation of their service and we accepted that any breach of that agreement might *risk* the withdrawal by SCTS of the agreement and the right to access the database. These were very serious consequences for the respondent’s operations.

233. Mr McCulloch did not believe that the claimant had fully appreciated the seriousness of the consequences; and he was not convinced that it would not happen again, given what he believed to be the claimant’s failure to understand that. He took account of the claimant’s length of service and relied on the fact that she was an experienced member

of staff who had worked for the service for nine years and therefore understood procedures, or ought to have done. That was what he relied on to conclude that a lesser sanction was not appropriate in these circumstances.

234. We took the view that he was entitled to reach that conclusion given the information available to him and it could not be said that the sanction of dismissal in such circumstances was outwith the range of reasonable responses.

235. We have discussed above too that the claimant has not established that dismissal could be said to be an act of race discrimination. We have found above that the claimant's race played no part whatsoever in the respondent's decision to dismiss her, by reference to the comparators she relied on. To the extent that the claimant seeks to argue that the sanction for others in similar circumstances was less severe, and therefore inconsistent, as discussed above we do not accept that the claimant and those comparators were in "truly parallel circumstances". This was not least because they had accessed an internal database and in any event the comparators relied on by the respondent were in fact dismissed in similar (if not identical) circumstances.

Procedural fairness

236. We heard evidence that the claimant had appealed but we did not hear any detail about the decision-making process. This was because the claimant's only complaint about procedural fairness related to the delay in hearing the appeal. We understood that the claimant relied on this evidence because she intended to argue that there had been an unreasonable failure to comply to comply with the Acas code of practice had she been successful. However, as we have found that dismissal fell within the range of reasonable responses there can be no claim in respect of any delay.

237. We came to the conclusion that in all these circumstances that the sanction of dismissal was within the range of reasonable responses open to the respondent, and accordingly that dismissal was fair. The claim for unfair dismissal is therefore also dismissed.

Date sent to parties **___30 July 2026_________**