EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 4103205/2025

Final Hearing held in Dundee on 12, 13, 14, 15, 18, 19 May 2026

Employment Judge R Phillips

Mrs E Archbold — **Claimant**
In person

Marks and Spencer PLC — **Respondent**
Represented by:
Mr H Dhorajiwala,
Counsel

JUDGMENT

The judgment of the Tribunal is that the respondent did not directly discriminate against the claimant contrary to ss13 and 39(2)(c) of the Equality Act 2010 and, accordingly, the claim is dismissed.

REASONS

Introduction

1. The claimant presented claims of unauthorised deduction from wages (which was dismissed on 8 December 2025 upon withdrawal) and direct race discrimination against the respondent arising from a difficult working relationship with a colleague over a number of years and the line management response to these issues. The claimant is Turkish. The claimant's employment was continuing at the time of the final hearing. The respondent resisted the claims.

2. Preliminary hearing for case management took place on 5 December 2025 before Employment Judge Kemp.

3. A Turkish interpreter was provided for the final hearing (as before at the case management preliminary hearing). The claimant started giving evidence in Turkish but later reverted to English, with occasional translation assistance provided. The translator translated the respondent's submissions into Turkish, and the claimant delivered her submissions in English.

4. The claim called for a final hearing on 12-19 May 2026, after the first day of the final hearing was vacated due to a lack of judicial resource.

5. The Tribunal was mindful of the overriding objective to deal with cases fairly and justly and that the Tribunal was able to assist the claimant as an unrepresented party to an extent but not so as to act as her legal adviser.

Preliminary Issues

6. At the start of the final hearing, there were a number of preliminary issues still to be determined: (a) the respondent had no objection to the claimant's separate bundle being used; (b) the respondent's list of issues, which focused on six allegations of direct race discrimination, was not in either Bundle but was added to the Bundle by agreement (a copy of which is appended to this Judgment); (c) a timetable and running order of the evidence of all witnesses was agreed; (d) arrangements for submissions were agreed, including that the respondent would share in advance written submissions (on account of the claimant being a party litigant) and the claimant would be allowed to give her submissions after the respondent; (e) as there was no order for witness statements and the "witness statement" included in the claimant's bundle did not comply with the Presidential Guidance and Practice Direction on the use of witness statements in Scotland, this would not be permitted and the witness would need to give oral evidence by answering questions posed by the claimant; (f) the parties agreed the terms of an *aide memoire* that the claimant could use while giving evidence (as mentioned to in Judge Kemp's case management note); and (g) having asked about an opening statement that the claimant had prepared, the Tribunal explained that this was not the practice in Scotland, the respondent had not prepared an opening statement but that the opening statement would likely be useful starting point for any submissions which the claimant wanted to make after all the evidence was heard. After a short adjournment, the claimant proceeded to give her evidence under affirmation.

Evidence

7. A joint bundle had been lodged (consisting of 183 pages) and a separate bundle lodged by the claimant (consisting of 14 pages). The claimant also emailed the Tribunal during the final hearing to clarify her evidence.

8. The claimant gave evidence orally on her own behalf and Mrs Gillian Girvan also gave evidence for the claimant.

9. The respondent led evidence from:

(i) Ms Lesley Payne (**Ms Payne**), a bra fitter at the respondent's Stirling branch;
(ii) Lindsay Adkins (**Ms Adkins**), at the time Store Manager of the respondent's Stirling branch;
(iii) Derek Peat (**Mr Peat**), the independent grievance manager at another of the respondent's branches in Scotland; and
(iv) Tracey Simm (**Ms Simm**), Team Manager and the current line manager of Ms Payne and the claimant at the respondent's Stirling branch.

10. Other individuals referenced in this Judgment are:

(i) Taylor McLean (**Ms McLean**), Team Manager in November 2023 in the Food department of the respondent's Stirling store;
(ii) Heather Bennet (**Ms Bennet**), Team Manager in November 2023 and arranged a meeting between the claimant and Ms Payne;
(iii) Marietjie (known as 'Mickey') Bradley (**Ms Bradley**), Team Manager in April 2024;
(iv) Jacqui Waddell (**Ms Waddell**), Team Manager in January 2025;
(v) Gillian Girvan (**Mrs Girvan**), Customer Assistant and bra fitter from approximately 2021 to the final hearing;
(vi) Jeanette McFarlane (**Ms McFarlane**), Customer Assistant and bra fitter; and
(vii) Maggie Laird (**Ms Laird**), Customer Assistant and bra fitter.

Findings in Fact

11. This Judgment does not seek to address every point about which the parties have disagreed. It only deals with the points which are relevant to the issues which the Tribunal must consider to determine if the direct race discrimination claim succeeds or fails. If a particular point is not mentioned, it does not mean that it has been overlooked, it simply means that it is not relevant to the issues to be determined. The relevant facts, which the Tribunal found to be admitted or proven, are set out below.

12. The respondent is a leading retailer in the UK, operating a network of stores and online platforms that sell clothing, home products, beauty items, and food.

13. The respondent operates a number of relevant policies applicable to employees, including the following:

(i) Inclusion, Diversity and Equal Opportunities Policy. The policy emphasised the respondent's commitment to equality, diversity and inclusion and stated that discrimination, bullying, harassment and racist behaviour would not be tolerated. The policy provided that allegations of discrimination would be investigated and, if substantiated, could result in disciplinary action up to and including dismissal. Employees were encouraged to raise concerns through the grievance procedure.

(ii) Grievance Policy. Under this policy, employees were able to raise concerns regarding their treatment at work, including allegations of bullying, harassment, discrimination and racism. The policy further provided that allegations of misconduct or discrimination against another employee could be investigated under the respondent's disciplinary procedures.

14. The claimant is Mrs Elif Sahin Archbold. The claimant is of Turkish nationality and/or ethnic origin and relies upon race as a protected characteristic under the Equality Act 2010.

15. The claimant has been employed by the respondent since 30 March 2008. The claimant's employment remained ongoing at the date of the final hearing.

16. The claimant is employed as a Customer Assistant. Whilst she had worked predominantly in the lingerie department for many years and undertook specialist bra-fitting duties, there was no contractual term identified in the employment documentation which entitled her to work exclusively in the lingerie department or as a bra-fitter. Customer Assistants could be deployed to different areas of the store according to operational requirements.

17. The claimant's hours of work varied throughout her employment. Latterly, the claimant worked term time only: with 8 weeks off during the school summer holidays (four paid as holidays and four weeks unpaid), one week each in February and October (paid as holidays), pursuant to a Flexible Working Term Time Agreement with the respondent. This should be reviewed annually and could end when the claimant's daughter reached 16 years of age: page 90, Bundle.

18. In 2025, Ms Payne was also a Customer Assistant, was a trained bra fitter and was a trained stock controller. Ms Payne was the longest serving bra fitter in the lingerie department in the respondent's Stirling store with 20 years' service. At the time of Allegations 1-3, Ms Payne worked full time in the lingerie department but later reduced her hours. The claimant and Ms Payne have been colleagues for 16 years.

19. As trained bra fitters at the respondent, the claimant and Ms Payne were specialist retail colleagues who helped customers of the respondent find bras that provide the correct fit, comfort, support, and style. The role combines product expertise, customer service, and sales skills. The team in the lingerie department had a limited number of trained bra fitters and other Customer Assistants who were not trained in bra fitting. When there was more than one bra fitter working in the lingerie department, managers operated a rota with one-to-two-hour long slots when the bra fitters would take walk-in bra fittings and booked appointments. Latterly, rota system was introduced which was prepared by the Team Managers.

20. The lingerie department of the respondent's Stirling Store had a relatively flat managerial structure: the Customer Assistants (some of whom were trained bra

fitters and some who were not) attending to customer were on the same level, and they were managed by a team manager, who changed over the years. Team managers involved in some capacity within the lingerie department included Ms Bennet, Ms Bradley, Ms Waddell, and Ms Benson. Latterly, Ms Simm is the team manager covering the lingerie department.

Team Dynamics

21. The working relationships between Customer Assistants within the lingerie department of the Stirling Store were strained. In the 6 months leading up to this final hearing, the claimant and Ms Payne did not engage with each other. Prior to that, Ms Payne was capable of being quite abrupt and rude, dismissive of the claimant and generally did not have a pleasant tone voice when speaking to the claimant. Ms Payne's behaviours were subtle: not aggressive, but dismissive. If the claimant did a job, Ms Payne would criticise it and talk to others about the claimant. There was a "clique" in the lingerie department. The "clique" consisted of Ms Payne, Ms McFarlane, Ms Laird and later Ms Benson. Although latterly Ms Laird has not been involved. Ms Payne and others had tried to get Mrs Girvan on their informal grouping. They did this by talking about the claimant, criticising her work and saying that she was in a mood today. There was a pattern of unfriendly behaviours by Ms Payne towards the claimant. These behaviours were not only directed to the claimant. Ms Payne was critical of other Customer Assistants, including one called Robin because she did not believe she was good at her job. The lingerie department was not an easy place to work in, and it got worse progressively. The strained working relationships in the lingerie department was a known issue amongst the staff and was known to team managers.

Observations on evidence of team dynamics

22. The Tribunal accepted the evidence of Mrs Girvan as both credible and reliable generally and in particular concerning Ms Payne's behaviours towards the claimant and the "clique" (as Mrs Girvan put it) within the lingerie department at the respondent. She gave her evidence in a measured way and had no vested interest, in contrast to both Ms Payne and the claimant. Notably, and as the Tribunal accepted, Mrs Girvan did not see anything which she identified as concerning race or ethnicity in Ms Payne's various interactions with or concerning the claimant.

Allegation 1

23. In or around November 2023, the claimant was asked by a Team Manager, Ms McLean, to start her shift in the lingerie department at 6am. The claimant was given this shift to "work the stock". At the time, Ms McLean was a team leader in the Food department. There was no move or delivery arranged for the lingerie department that day.

24. At around 08.30, Ms Payne arrived for her shift. Ms Payne was surprised to see that the claimant had started already. This was unusual for the claimant because she started at 09.00.

25. At around 09.00, Ms Payne approached the claimant and asked her what time she started. The claimant answered 06.00.

26. Ms Payne asked the claimant if there was a move planned? Ms Payne was enquiring to understand why she had an early start. The claimant replied, "It's none of your business" and "Taylor asked her to come in at that time".

27. Ms Payne reacted angrily to this answer: she said that the claimant can't be working those hours in the lingerie department and that if the claimant wanted to work those hours, she should work in Food.

28. Ms Payne said this because: (a) 06.00am was not a standard start time in the lingerie department; (b) Ms Payne stated that she believed the claimant has asked for extra hours from Ms McLean which were not justified, not that Ms McLean had suggested these hours to the claimant; (c) No exceptional business reason given to justify the early start for the claimant that morning; and (d) Ms Payne believed her day was adversely impacted by this because it would create for her a "problem to solve" because of changes to tea break and lunch break arrangements in the middle of the day.

29. Ms Payne was angry during this exchange. The claimant said, "Does it bother you?" and Ms Payne said, "As a matter of fact it does bother me. It bothers us all." This was a reference to Ms Laird, or another lingerie colleague, who was nearby.

30. Ms Payne then picked up a bin that had not been emptied and made a comment about the claimant not having cleared it and said, "you've not been doing anything". Ms Payne tossed the bin back under the till area.

31. During this exchange both Ms Payne and the claimant became agitated and there was a relatively heated, verbal confrontation.

32. After this exchange, the claimant asked for mediation with Ms Payne. The reason the claimant asked for workplace mediation was because Ms Payne challenged her during the confrontation. Ms Payne did not request mediation. The claimant's request was made to Ms Bennet. The mediation / facilitated conversation took place, facilitated by Ms Bennet. Ms Bennet said that she can't pick sides and she was there to listen. During the "mediation", Ms Payne repeated her view that the claimant had no right to start at 6am and that Marks & Spencer "cannot provide hours to suit your family and lifestyle". The claimant expected Ms Bennet to intervene. Ms Bennet did not say anything about these comments and the mediation ended without any resolution.

Observations on evidence re Allegation 1

33. There was a conflict between the claimant's and Ms Payne's accounts of their conversation and the date when it occurred. The Tribunal had regard to all records relating to the conversation (namely, the claimant's grievance of 21 March 2025 (page 139), the notes of the various meetings held by Mr Peat (at pages 143 and 151), and the claimant's ET1 (at pages 11 and 12) and Further & Better Particulars (at page 53)).There were no contemporaneous records of the conversation and no written records of the facilitated conversation / mediation. The notes from the Mr Peat meetings in 2024 recorded fragments of the evidence from Ms Payne and the claimant. The respondent did not call Ms Bennet to give evidence about the facilitated conversation or Ms McLean to give evidence about the justification for rostering the claimant to start at 06.00 am that day. Mr Peat did not check with Ms Bennet or Ms McLean either during his investigation.

34. The oral evidence given by the claimant and Ms Payne was explored in both evidence in chief and cross-examination. The contrary positions concerning Allegation 1 were put to both the claimant and Ms Payne in cross examination and they both maintained their respective positions. The claimant's position, as recorded in the grievance letter and the minutes of Mr Peat meeting, the ET1 and Further and Better Particulars, has developed over time. But her evidence before the Tribunal was both reliable and credible in connection with Allegation 1. The development in the claimant's evidence was not because of a recollection that appeared to have been reconstructed over time but because this was the claimant's last opportunity to set out her recollection of matters.

35. On the balance of probabilities, the Tribunal accepted that the conversation took place in November 2023 (not several years earlier). The Tribunal preferred the claimant's evidence over the evidence of Ms Payne.

Allegation 2

36. In March 2024, after returning from a tea break, the claimant overheard someone saying her name and gathering behind the till area with other Customer Assistants to speak. Ms Payne confirmed that she did not say the claimant's name, and that it was either Ms McFarlane or Joan, who said the claimant's name. The claimant could not hear what was said, save for her name. The claimant suspected that Ms Payne and her colleagues were speaking about her behind her back and this upset her. The claimant announced that she was present and asked why they were looking for her? The claimant spoke assertively, but did not shout, "erupt", "raise her arms" or otherwise act unprofessionally. Ms Payne answered the claimant and told her that she was looking for her because she was going on her break and wanted to know that the claimant was back from her break. There was one customer between lingerie and menswear but not close by. Following that incident, Ms McFarlane (not Ms Payne) raised a complaint about the claimant's behaviour alleging that she had erupted and that a customer observed it.

37. Pursuant to the Grievance Policy and Line Manager Guidance, Ms Bradley, Team Manager, held a facilitated conversation between the claimant and Ms Payne on 19 April 2024, given the ongoing issues between the claimant and Ms Payne. During the facilitated conversation, Ms Bradley stated that the claimant had been overheard and observed by a customer / mystery shopper. The claimant asked for the records that there had been a mystery shopper and what they observed. No records were provided to the claimant at the time or since.

38. After this facilitated conversation, the claimant was sent to work in the footwear department by Ms Bradley. The claimant perceived that she was being punished by the Team Manager because Ms Payne returned to the lingerie department. The claimant perceived that she was thereafter treated unfairly by management and felt humiliated by Ms Bradley. The claimant believed that management were willing to accept Ms Payne's word over her word.

39. As part of his later investigation, Mr Peat considered the incident. He recorded Ms Payne's account that she had merely been asking where the claimant was because it was time for her break and that the claimant had then "erupted". He also considered the evidence of other witnesses. Mr Peat ultimately concluded that there was insufficient evidence to establish that Ms Payne had bullied, harassed or discriminated against the claimant by reporting her to Ms Bradley and found no basis upon which to conclude that the incident was racially motivated. Mr Peat made no findings about the facilitated conversation or the time the claimant spent working outside the lingerie department.

Observations on evidence re Allegation 2

40. There was a conflict between the claimant's and Ms Payne's accounts of this incident. The Tribunal had regard to all records relating to this incident (namely, the claimant's grievance of 21 March 2025 (page 139), the notes of the various meetings held by Mr Peat (at pages 143 and 151), and the claimant's ET1 (at pages 11 and 12) and Further & Better Particulars (at page 53)).There were no contemporaneous records of the conversation and no written records of the facilitated conversation / mediation. The notes from the meetings with Mr Peat in 2024 recorded fragments of the evidence from Ms Payne and the claimant only. The respondent did not call Ms McFarlane or Ms Bradley to give evidence that may have corroborated Ms Payne's account. Mr Peat did not check with Ms McFarlane or Ms Bradley either during his investigation.

41. On the balance of probabilities, the Tribunal accepted that this incident took place broadly as the claimant described. The Tribunal preferred the claimant's evidence over the evidence of Ms Payne, save that Ms Payne explained either Ms McFarlane or Joan said the claimant's name, that they were not talking critically about the claimant, that there was a customer present between menswear and lingerie, and that Ms McFarlane's raised a complaint about the claimant. There was no unprofessional eruption by the claimant, and the claimant did not throw her arms up in the air. The claimant was assertive and

approached colleagues in a manner consistent with believing that they had been talking about her, behind her back. The Tribunal accepted that Ms Payne was taken aback by the claimant but considered that this was not due to an outburst by her but because she stood up to them. However, while the claimant was not unprofessional, there was a customer between lingerie and menswear.

Allegation 3

42. In January 2025, Ms Payne spoke to the claimant about a mislabelled item in front of a team manager, Jacqui Waddell. Ms Payne said, “Who would do that?” in connection with an incorrect label being placed on that item.

43. The claimant understood that there was an implication or insinuation from that comment that Ms Payne was accusing her of placing incorrect labels or stickers on that garment in front of a team manager. The error was so manifestly wrong that the claimant perceived this comment as a criticism of her and her work. The claimant believed that Ms Payne did so publicly in circumstances to embarrass her. The claimant maintains that she was not responsible for the error alleged and requested that CCTV footage be checked to demonstrate this. She contends that no action was subsequently taken and that the incident formed part of a wider pattern of criticism and singling out by Ms Payne.

44. Ms Payne believed that she was only remarking on a labelling error and was not accusing the claimant of making the error. This was something that Ms Payne did with others, including Mrs Girvan. Ms Payne coached Mrs Girvan on labelling errors when Mrs Girvan made them and, as far as Mrs Girvan was aware, did not report this to management.

45. As part of his investigation, Mr Peat interviewed Ms Waddell, who was present during the exchange between Ms Payne and the claimant. Ms Waddell's recollection differed from the claimant's account and appeared to corroborate Ms Payne’s account. She stated that Ms Payne had held up an item of clothing and asked words to the effect of, "Who would do that?" Ms Waddell did not understand the comment to be directed at the claimant and did not regard it as an accusation against the claimant. However, Ms Waddell accepted that there may have been a subtext to the comment which she was not aware of or had not picked up on at the time. She stated that the incident did not lead to any management action and occurred in an area not covered by CCTV.

46. Mr Peat also interviewed Ms Payne, who denied the allegations made against her. Having considered the evidence, he concluded that there was insufficient evidence to establish that Ms Payne had deliberately sought to humiliate the claimant in front of a manager or that the incident constituted bullying, harassment or race-related misconduct. He therefore concluded that there was no disciplinary case to answer.

Observations on evidence re Allegation 3

47. The Tribunal did not hear from Ms Waddell. The Tribunal accepted that the meaning to be attributed to Ms Payne's comment was not an accusation of unsatisfactory work by the claimant in front of a manager. The comment, "Who would do that?" was not something that the claimant could reasonably have inferred was a criticism of her work. Ms Payne would have made that comment whether Ms Waddell was present or not. Communication between Ms Payne and the claimant had deteriorated such that comments by Ms Payne triggered a reaction from the claimant which was rooted in her previous experience of Ms Payne at work which went unnoticed by management. While the claimant was credible in her perception that this comment by Ms Payne was intended to undermine her, her account was not reliable and was not accepted by the Tribunal. The Tribunal preferred Ms Payne's account of Allegation 3.

Allegation 4

48. 11 March 2025 was the claimant's first shift after 3 weeks of bereavement leave following the death of her father in Turkey.

49. On 11 March 2025, whilst rostered to work as a bra fitter in the lingerie department, the claimant assisted a customer with particular needs and thereafter carried out a bra-fitting appointment which had been scheduled for 1.00 pm. That customer had booked an appointment for a bra fitting with Ms Payne (who was familiar with the customer's background). The customer asked the claimant about the particular bra fitter with whom she had an appointment. The claimant did not check the customer record, which confirmed who the bra fitter booked was. If she had looked, the claimant would have discovered it was Ms Payne whom the customer had requested to fit her bra. The claimant proceeded with the bra fit appointment herself (as the rostered bra fitter). Ms McFarlane overheard the claimant and the customer speaking and went to find Ms Payne. After the bra fit appointment was over, the claimant went on her lunch break and asked a manager, Aileen Benson, to pass a message on that the 13.00 appointment had been completed during her 11.00-13.00 slot. When the claimant returned from her break, Ms Payne approached her and accused her of "stealing" a customer appointment. Ms Payne spoke to the claimant directly. The claimant answered Ms Payne saying she had stolen customers from her. Ms Payne asked whether the claimant wished to attend mediation / a facilitated conversation again. This incident prompted the claimant to make her formal written complaint to management dated 21 March 2025.

50. The incident formed part of the allegations subsequently investigated by Mr Peat following the claimant's written complaint of 21 March 2025. Ms Payne denied that she had bullied, harassed or discriminated against the claimant. Following his investigation, Mr Peat concluded that there was insufficient evidence to establish the allegations and found no evidence that any conduct by Ms Payne was racially motivated. He determined that there was no disciplinary case to answer.

Observations on evidence re Allegation 4

51. There was limited dispute about the underlying chronology. The principal disagreement concerned whether the claimant had improperly taken a customer who had requested an appointment with Ms Payne, the significance of the claimant not checking the appointment details before conducting the bra fit, and Ms Payne's response to the claimant after she returned from her break. The claimant genuinely believed she was carrying out her duties as the rostered bra fitter and was unaware that the customer had requested Ms Payne. The Tribunal also accepted that the customer had requested an appointment with Ms Payne and that, had the claimant checked the appointment details, she would have discovered that fact. The Tribunal accepted that the exchange upset the claimant, particularly as it arose on her first shift following bereavement leave. However, it considered that the disagreement arose from the handling of the customer appointment against the background of an already strained working relationship between the claimant and Ms Payne.

Grievance

52. On 21 March 2025, the claimant raised a complaint dated 21 March 2025 about Allegations 1, 2, 3 and 4 in a letter to Ms Adkins, Stirling Store Manager on 21 March 2025. In the letter, the claimant outlined several allegations of workplace bullying and oppressive behaviour by her colleague, Ms Payne, over "many years". The claimant referred to "regular oppressive behaviour" from Ms Payne resulting in her suffering "unwanted conduct in a nasty, intimidating and humiliating manner". The claimant went on to list "only" the most recent examples and referred to Allegations 1, 2, 3, and 4. In respect of Allegations 1 and 2 only, the claimant complained about line management inaction or mistreatment, allegations which did not form part of the agreed List of Issues.

53. The claimant referred to race specifically in three ways in her grievance letter:

> "On several occasions over time, [Ms Payne], after asking me a question or me asking her a question, says she can't understand me asks me to repeat what I am saying multiple times. She then just says she doesn't understand me and walks away. This feels like racial bullying and discrimination…"

and

> "I am the only British[1] person on that floor and the bullying pattern of behaviour by Lesley, the manner which she speaks to me and treats me at every opportunity makes me believe that it could be racially motivated"

and

[1] The claimant confirmed that this was a typo which she corrected with Mr Peat – she was the only "non-British / Turkish person on that floor"

> "… Most of all I would like to work in an environment where I do not feel as if I am a foreigner and oppressive bullying behaviour is not tolerated or accepted."

The claimant did not otherwise point to any evidence or factor that would support drawing an inference that race could be the reason why the alleged treatment occurred. Most of the claimant's grievance was a general complaint of workplace bullying, as opposed to racially motivated workplace bullying.

54. In response to the claimant's complaint, the respondent appointed an independent team manager at another store, Mr Peat, Team Manager, Cumbernauld Store, to investigate the issues raised by the claimant to determine what action needed to be taken.

55. In April 2025, the respondent was affected by a major cyber-security incident which disrupted aspects of its retail and online operations. The incident affected the respondent's business generally and was unrelated to the claimant or her complaints. It forms part of the factual background to events occurring during 2025 and may be relevant only insofar as it provides context for any administrative or operational delays relied upon by the parties.

56. Mr Peat held an investigation interview with the claimant on 15 April 2025. This was not clearly explained to the claimant. The notes of the meeting consisted of one and a half pages of typed notes: see page 143-144 of the Bundle. Mr Peat was taking the notes as well as leading the meeting. The footer on the notes of the claimant's meeting with Mr Peat indicated that there were two of four pages. The cover page and last page was not produced to the Tribunal.

57. The claimant messaged Mr Peat for an update on 12 May 2025 (a month after her meeting with him and prior to the interviews with others). Mr Peat replied to the claimant the next day with a holding response and referenced the cyber security attack.

58. Mr Peat also interviewed Ms Payne and other witnesses on 26 May 2025 as part of his investigation into the claimant's complaint. The notes of these meetings consisted of between half a page and one page of typed notes: see pages 149, 150, and 151 of the Bundle. Mr Peat was taking the notes as well as leading these meetings. No cover page detailing the date and times of the meetings were recorded. All meetings took place on 26 May 2025.

59. On 12 June 2025, Mr Peat wrote to Ms Payne in the following terms:

> "Following the recent investigation, I have decided that there is no case to answer and can confirm that you will not be invited to a disciplinary hearing. No further action will be taken in respect of this matter."

60. The same letter went on to require her to complete Inclusion and Diversity training. The letter contained no detailed reasoning.

61. On or before 12 June 2025, Mr Peat informed Ms Adkins that he had concluded his investigation into allegations that Ms Payne had breached the M&S disciplinary policy. His stated conclusion to Ms Adkins was that there is no case to answer. Mr Peat recommended that Ms Payne and the claimant complete Inclusion and Diversity training, and that they work in different departments going forward. While the precise date of that communication is not identified, it is broadly consistent with the letter of 12 June 2025 was sent to Ms Payne.

62. The claimant followed up with Mr Peat again on 2 July 2025 and again on 7 July 2025, forwarding a message from Ms Adkins confirming that Mr Peat would provide a response to the claimant's grievance. The claimant followed up with Mr Peat again by text message and Mr Peat replied stating:

> "Hi Elif, I am truly sorry for the delay with this. I have an outcome letter for yourself and I will get this to yourself as soon as I possibly can. I am just waiting to have it proofread, which given the issues we have had over the past months, has taken longer than I'd like. I am confident that I can forward the letter to you this week."

63. On 21 August 2025, the claimant sent the third reminder to Mr Peat by text message. Mr Peat replied in the following terms:

> "Hi Elif, I can confirm the grievance was treated seriously and the allegations raised within were fully investigated in line with the M&S Disciplinary Policy. I interviewed all necessary named persons and addressed all matters. I can confirm that I found there was no case to answer for the accused. The report that I filed would not be shared with yourself given the confidential nature of the interviews I held."

64. The claimant replied to Mr Peat that evening stating:

> "Derek I was shocked to read your text. You informed me you would share the outcome of your investigation in a report. I have been waiting for a copy of that report since early July. While I understand that you cannot share confidential information, I am requesting a formal written response from you on the outcome of the investigation , with more detail than was in your text. I look forward to receiving your written report and summary of the investigation as soon as possible.

65. In response, on 26 August 2025, Mr Peat sent the claimant a grievance outcome letter in the following terms:

> "Dear Elif,
>
> **Outcome of Grievance – Managed via Alternate Process**
>
> Following your grievance dated 21/03/2025, we met on 15/04/2025 to discuss your concerns.

> Please be advised that after reviewing the details provided and desired outcome requested by you, I was satisfied that the concerns raised are in fact considered an allegation of Misconduct.
>
> Due to this, as discussed in the meeting held on 15/04/2025, the concerns were reviewed in line with the Disciplinary Policy. Please be assured that appropriate action was taken in line with evidence found but due to this action involving another, in line with GDPR regulations, this will not be shared with you.
>
> I want to thank you for taking the time to raise your concerns and allowing me the opportunity to investigate and take appropriate action where necessary.
>
> Yours sincerely,"

This letter did not inform the claimant of her right to appeal the Grievance decision, per the Grievance Policy.

66. The report that Mr Peat referred to in his message was lodged in the Hearing Bundle at pages 177-178. It was undated. There were a few typographical errors which Mr Peat corrected during his evidence (including the reference to the claimant's name and her store base). This report recognised that the claimant was complaining about Ms Payne's conduct, and that the claimant perceived Ms Payne had subjected her to years of bullying and discriminatory treatment. It recognised that Ms Payne denied the allegations. While Mrs Girvan described tension in the relationship and a tendency for Ms Payne to disagree with the claimant, Mr Peat considered that she was unable to identify any specific incident of bullying or racially motivated conduct. Ms Waddell's evidence did not support the claimant's account of the January 2025 incident. Mr Peat concluded that there was a breakdown in the working relationship between the parties but insufficient evidence to establish bullying, or harassment or discrimination due to race. He therefore concluded that there was no disciplinary case for Ms Payne to answer.

67. This outcome was explained to Ms Payne and Ms Adkins by 12 June 2025 but was not communicated to the claimant until 26 August 2025.

68. The respondent's policies contemplated that grievances raising allegations about another employee's conduct could lead to investigation under the disciplinary process. The Grievance Policy provided that such allegations would be investigated in line with the Disciplinary Policy. The accompanying Grievance Line Manager Guide stated that, where a grievance was upheld or partially upheld, it might be necessary to investigate another employee through the disciplinary process if their conduct appeared to fall below expected standards or to breach a policy. The Guide also provided a right of appeal against a grievance outcome and required the investigating manager's notes and investigation materials to be made available to the appeal manager.

69. The Disciplinary Policy provided that potential conduct issues would normally be the subject of a thorough and independent investigation by an appointed investigating manager, who would gather relevant information and decide whether a disciplinary hearing was required. The policy further stated that notes would be taken to ensure an accurate record of the investigation.

70. The respondent's Disciplinary Line Manager Guide referred to an Investigation and Suspension Line Manager Guide. Although that guide was not produced to the Tribunal, the Tribunal finds that it was the guide relevant to the process undertaken by Mr Peat, which was a disciplinary investigation resulting in a finding of no case to answer.

Allegation 5

71. On 19 April 2025, the claimant met with Ms Adkins, Store Manager, in her office at the Stirling branch. The purpose of the meeting was the possibility of the claimant transferring to the Food department within the Stirling store. This possibility arose because the quantity of hours to run the fashion department was decreasing, whereas the quantity of hours to run Food was increasing. This meant that consideration was being given to moving staff from Fashion to Food. Ordinarily, this was not a proposal that would have been raised with the claimant because, first, Fashion could not lose people willing to work on Sundays and second, the claimant was a bra fitter and regarded as a highly skilled customer assistant which the lingerie team could not lose. However, Ms Adkins was aware that the claimant had stated in her grievance letter that if there was no improvement in the workplace after a set timeframe, then either Ms Payne should be moved from the lingerie department or the claimant would move to a department within the Stirling store that she agreed to.

72. With that context, Ms Adkins explained to the claimant that an opportunity had arisen for a number of colleagues to be transferred from other departments to the Food department within the Stirling store and she wanted the claimant. The claimant became tearful and was upset. The claimant perceived that Ms Adkins was trying to persuade her to leave the lingerie department. The conversation occurred four days after the claimant's meeting with Mr Peat about her complaint about Ms Payne's conduct. However, Ms Adkins did not use any words to persuade or pressure the claimant to move department either in her office or later in the toilet. Ms Adkins maintains that the proposal was merely an option, not a requirement, that the claimant move department. Ms Adkins wanted the claimant to be aware of this option and listen to the claimant's views.

73. After the claimant's meeting with Ms Adkins in the office ended, the claimant asked and was given permission to go to the toilet to wash her face and compose herself further before returning to the shop floor. Ms Adkins also went into the staff toilet. Ms Adkins continued the discussion with the claimant after the claimant entered the toilet cubicle. Ms Adkins repeated said, "you don't have to go". Continuing this conversation with the claimant in the toilet caused the claimant distress and anxiety. Ms Adkins re-iterated that the proposal to move

department was merely an option for the claimant to consider. Ms Adkins' intention was to check that the claimant was ok and understood that she was not being asked to move. Ms Adkins updated the claimant's line manager, Ms Simm, shortly thereafter and explained the claimant absolutely did not want to move and was very upset that she had asked.

74. Before having this conversation with the claimant on 19 April 2025, Ms Adkins did not seek advice from HR, even though she knew that the claimant had raised a grievance about bullying in the workplace which could contravene the Equality Act 2010. Ms Adkins was not aware from the claimant's grievance letter or other background information that the claimant was concerned about (a) an allegation that Ms Payne had said to the claimant in November 2023 about working in the Food department if she wanted to certain early shifts; and, (b) an allegation that Ms Bradley had sent the claimant to work in the footwear department after a facilitated conversation between Ms Payne and the claimant, which the claimant perceived as a punishment when Ms Payne was not asked to work elsewhere. Ms Adkins was aware that the claimant had her meeting with Mr Peat about her grievance four days earlier, but not about what was discussed.

Observations on evidence re Allegation 5

75. The Tribunal preferred the account of Ms Adkins over the claimant's account concerning allegation 5. There was an unrelated business reason that created the option for staff in Fashion to be redeployed to the Food department. Ms Adkins wanted the claimant to know about this option in case it was something the claimant would welcome. Ms Adkins' account was consistent that the message she communicated to the claimant was this was an option only for the claimant to consider and not a requirement. The Tribunal finds the claimant genuinely but mistakenly perceived Ms Adkins' intentions, words and actions on 19 April 2025 as trying to persuade her to move department.

Allegation 6

76. Following a welfare meeting on 23 May 2025 during the claimant's sickness absence, she received an email on 26 May 2025 from Tracey Simm containing a letter with the following passage:

> "We also discussed that if your absence continues at the current level and/or worsens then one of the possible outcomes of this process could be that I decide to dismiss you on the grounds of your incapability to return to work in the future due to ill health."

77. This paragraph was template wording and was a routine explanation of the possible outcomes of its sickness absence management procedure. It was a possible outcome of an ill health process, albeit not one actively under consideration at that point as it was the very beginning of the process. The claimant perceived this as a threat to dismiss her.

78. In later welfare / ill health meetings with the claimant, Ms Simm explained the meaning of the letter (and that sentence) to the claimant. On those occasions, the claimant was content with that explanation at those times.

79. The respondent issued a further welfare / ill health letter which contained the same wording warning the claimant about the possible outcomes of this process. The claimant did not take exception to the wording in that letter.

Observations on evidence re Allegation 6

80. The Tribunal accepted the account given by Ms Simm concerning the wording included in the welfare / absence letter. It was template wording. The Tribunal accepted that it was the respondent's standard policy to include this wording in every letter issued as part of the absence management process (and not just when dismissal was actively in contemplation). Ms Simm did not personally like this language in the standard letter template that she populated and issued to the claimant.

81. During cross examination, the claimant initially accepted that the template wording would have been used in any letter following a welfare / ill health meeting and the template wording had not been included by Ms Simm in the claimant's letter because of her race or ethnicity. The claimant also initially stated that a later welfare letter, which was not included in the Bundle, did not include the same words of warning that dismissal was one of the possible outcomes of the absence management process. However, the claimant later emailed the Tribunal, copying the respondent, to accept that was wrong and the later welfare letter had contained the same template wording explaining that a possible outcome of the process was dismissal.

Relevant Law

82. The relevant law is:-

Equality Act 2010 ('EqA'):-

Direct Discrimination – section 13

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

Employees and applicants – section 23

(1) 'On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances of each case.'

Employees and applicants – section 39

(2) 'An employer (A) must not discriminate against an employee of A's (B)–

…

(c) by dismissing B;

(d) by subjecting B to any other detriment.'

Time bar - section 123

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

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

(b) such other period as the employment tribunal thinks just and equitable.

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Burden of Proof - section 136

(1) This section applies to any proceedings relating to a contravention of this Act.

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

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

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

84. Under ss 13(1) and 39(2)(d) EqA 2010, the Tribunal must determine whether the respondent discriminated against the claimant by treating her less favourably than it treats or would treat others because of a protected characteristic of race or ethnicity. The claimant is Turkish and is of Turkish ethnic origin. The claimant also relies on an actual comparator (Mrs Girvan) (s 23(1) EqA 2010). However, if the Tribunal considers that circumstances of the actual comparators are not materially the same, the Tribunal must (given that the claimant is unrepresented) also consider how a hypothetical comparator would have been treated (**Balamoody v UK Central Council for Nursing, Midwifery and Health Visiting** [2001] EWCA Civ 2097, [2002] IRLR 288).

85. The fact that someone is treated unreasonably does not mean that they have been discriminated against, they must have been treated less favourably (**Glasgow City Council v Zafar** [1998] ICR 120).

86. The Tribunal must determine "what, consciously or unconsciously, was the reason" for the treatment (**Chief Constable of West Yorkshire Police v Khan** [2001] UKHL 48, [2001] ICR 1065). Discrimination must be a significant factor in the reason for the treatment, although not necessarily the sole, or intended reason (**Villalba v Merrill Lynch & Co Inc [2006] IRLR 437**, [2007] ICR 459). If a decision-maker's reason for treating an employee is not influenced by a protected characteristic, but the decision-maker relies on the views or actions of an employee which are tainted by discrimination, it does not follow (without more) that the decision-maker discriminated against the claimant: **CLFIS (UK) Ltd v Reynolds** [2015] EWCA Civ 439, [2015] ICR 1010 and **Gallop v Newport City Council** (No. 2) [2016] IRLR 395). What matters is what was in the mind of the individual taking the decision.

87. The Tribunal reminds itself throughout that direct discrimination law is concerned not with whether treatment was unfair, unreasonable, hostile, insensitive or even bullying, but with the reason for that treatment. The issue in each allegation is whether the treatment occurred because of the claimant's race. Workplace conflict, personality clashes, poor management, hostility or unfair treatment are not, without more, sufficient to establish direct discrimination.

88. In relation to all these matters, the burden of proof is on the claimant initially under s 136(1) Equality Act 2010 to establish facts from which the Tribunal could decide, in the absence of any other explanation, that the respondent has acted unlawfully. This requires more than that there is a difference in treatment and a difference in protected characteristic (**Madarassy v Nomura International plc** [2007] EWCA Civ 33, [2007] ICR 867). The burden then passes to the respondent under s 136(3) to show that the treatment was not discriminatory: **Wong v Igen Ltd** [2005] EWCA Civ 142, [2005] ICR 931. Facts still must be established on balance of probabilities.

89. In **Hewage v Grampian Health Board** 2012 IRLR 870 the Supreme Court endorsed the approach of the Court of Appeal in **Igen Ltd v Wong** and **Madarassy v Nomura International plc**. The judgment of Lord Hope in **Hewage** shows that it is important not to make too much of the role of the burden of proof provisions. They require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other.

Code of Practice

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

Equal Treatment Benchbook

91. The Tribunal took into account the relevant guidance in Equal Treatment Benchbook (updated February 2026), in particular Chapter 1 re litigants in person and Chapter 8 re racism and ethnicity.

Deliberations & Conclusions per complaint

Time bar limitation

92. The respondent contended that Allegations 1, 2 and 3 were presented out of time. The claim was presented on 29 August 2025. Allegation 1 occurred in November 2023, Allegation 2 occurred in March 2024 and Allegation 3 occurred in January 2025. Each allegation therefore occurred more than three months before the presentation of the claim.

93. The claimant contended that these matters formed part of a continuing course of discriminatory conduct by Ms Payne, culminating in Allegation 4 on 11 March 2025. (The subsequent management actions relied upon in Allegations 5 and 6 were presented within three months of the presentation of the claim.)

94. The Tribunal accepted that Allegations 1 to 4 concerned substantially the same individuals, namely the claimant and Ms Payne, arose in the same workplace, were said by the claimant to demonstrate a continuing pattern of conduct (which was broadly corroborated by Mrs Girvan's evidence concerning the team dynamics), and these Allegations were all expressly relied upon in the claimant's grievance dated 21 March 2025 as examples of what she described as workplace bullying over a period of years.

95. The Tribunal was satisfied that it was arguable that Allegations 1 to 4 formed part of conduct extending over a period for the purposes of section 123(3)(a) Equality Act 2010. The last alleged act within that sequence was Allegation 4 on 11 March 2025. Time therefore ran from that date. After taking into account the period of ACAS Early Conciliation, the claim was presented in time in

respect of Allegations 1 to 4. Accordingly, the Tribunal determines that Allegations 1, 2 and 3 are not barred by limitation.

Allegation 1: November 2023 early-start shift and confrontation with Ms Payne

96. The Tribunal found that the incident occurred substantially as described by the claimant and preferred the claimant's account to that of Ms Payne. In particular, the Tribunal found that Ms Payne challenged the claimant about commencing work at 06.00, expressed the view that the claimant should not be working those hours in the lingerie department and stated that if she wished to work those hours she should work in Food instead. The Tribunal also accepted that Ms Payne became angry during the exchange and that a heated verbal confrontation followed. The Tribunal further accepted that, during the later facilitated conversation, Ms Payne repeated her view that the claimant was not entitled to those hours and that Marks & Spencer could not provide hours to suit her family and lifestyle. These findings establish that the claimant was subjected to unwelcome criticism and challenge by Ms Payne.

97. The critical question is the reason for Ms Payne's conduct. Having considered all of the evidence, the Tribunal was concluded that race, nationality or ethnicity did not play any part in Ms Payne's conduct in November 2023. The evidence pointed to a non-discriminatory explanation for the incident. Ms Payne was the longest-serving, fulltime bra fitter in the department and regarded the claimant's unusual 06.00 start time as unjustified and disruptive. The Tribunal accepted that Ms Payne believed the claimant had requested and obtained hours which, in her view, were not operationally required and which created practical consequences for staffing arrangements throughout the day. The comments made by Ms Payne were critical of the claimant but were directed towards the claimant's working hours and departmental arrangements, not towards her Turkish nationality or ethnic origin.

98. In reaching that conclusion, the Tribunal has also considered the broader context of the team dynamics. The evidence disclosed a strained and deteriorating working relationship between the claimant and Ms Payne. The Tribunal accepted that Ms Payne could be dismissive of the claimant and that the claimant genuinely perceived her conduct as hostile. The evidence also showed that Ms Payne could behave in a similar manner to others in the department whom she believed (whether justifiably or not) were not performing. However, hostility towards an individual does not of itself establish hostility because of race. The Tribunal found no racial language, stereotyping, references to nationality, ethnicity or culture, or other evidence linking the confrontation to the claimant's protected characteristic. The Tribunal considered carefully whether the reference to “family and lifestyle” in the mediation with Ms Bennet could indicate a racial basis for this behaviour. However, the Tribunal determined that this comment was more likely to be a reference to the claimant’s term-time contract and working hours, than her race or ethnicity.

99. There were shortcomings in the facilitated conversation by Ms Bennet shortly after this incident and in the investigation process carried out by Mr Peat. The Tribunal accepted that Ms Payne made various comments that could be perceived by the claimant as hostile comments and no action was taken by Ms Bennet. Regarding the investigation by Mr Peat, relevant witnesses were not called, the investigation was superficial, failed to recognise the support that Mrs Girvan gave to the questionable behaviours of Ms Payne towards the claimant, while Mr Peat recognised a break down in working relationships, he failed to make decisions about what happened, and insufficient attention was paid to credibility and reliability. There was a lack of contemporaneous documentation and limited attempts made to recover any contemporaneous records. The conclusion that there was no disciplinary case to answer by Ms Payne was difficult to reconcile with the material available to him, particularly the support provided by Mrs Girvan's general support of the claimant's account. Those flaws were capable of raising a *prima facie* concern that the claimant's complaints had not been properly addressed by management. The Tribunal concluded that these issues were sufficient to shift the burden of proof.

100. The Tribunal has considered the claimant's reliance on Mrs Girvan as an actual comparator. Mrs Girvan's evidence did not establish that the claimant was treated less favourably than Mrs Girvan in materially similar circumstances because she was Turkish or not Scottish. Rather, her evidence supported the existence of workplace tensions and Ms Payne's tendency to be critical of colleagues generally. The Tribunal is satisfied that a hypothetical non-Turkish Customer Assistant who started work early in similar circumstances would have been treated in substantially the same way as the claimant. This allegation therefore does not support an inference of race discrimination.

101. However, once the burden shifted to the respondent, the respondent provided a cogent and convincing non-discriminatory explanation for Allegation 1 and Ms Payne's conduct in November 2023. The Tribunal accepted that the reason for Ms Payne's conduct was due to the way the claimant stood up to her, Ms Payne's perception that the claimant had been allocated inappropriate early-morning hours within the lingerie department and the operational consequences for her which flowed from that decision. The evidence also suggested an underlying tension due to workplace hierarchy based on seniority, length of service and departmental practices. The Tribunal concluded that these factors, rather than race, caused Ms Payne's actions.

102. Accordingly, although the Tribunal finds that Ms Payne did challenge the claimant, became angry and treated her in a manner which contributed to the deterioration of their working relationship, the Tribunal is not satisfied that the treatment was because the claimant was Turkish or of Turkish ethnic origin.

103. This complaint is therefore not well-founded.

Allegation 2: March 2024 incident behind the till area and subsequent management response

104. The Tribunal found that this incident occurred broadly as described by the claimant. The Tribunal preferred the claimant's account to that of Ms Payne, whilst accepting certain aspects of Ms Payne's evidence, namely that another colleague had referred to the claimant by name and that there was a customer present in the vicinity. The Tribunal rejected the suggestion that the claimant "erupted", behaved aggressively, threw her arms in the air, or otherwise conducted herself unprofessionally. The claimant was assertive and approached her colleagues because she believed they had been speaking about her behind her back. The Tribunal accepted that she did so in circumstances where she felt upset and isolated.

105. The Tribunal also accepted that the claimant was subsequently told by management that a customer or mystery shopper had observed the incident. On the evidence before it, however, there was no mystery shopper, no mystery shopper report, and no documentary evidence supporting that assertion. The Tribunal further accepted that the claimant was distressed by being sent to work in the footwear department after that facilitated conversation and perceived this as punitive treatment, when Ms Payne returned to the lingerie department.

106. The question is whether the claimant was ganged up on by Ms Payne and others and thereby was subjected to less favourable treatment by Ms Payne because of her race.

107. The Tribunal was not satisfied that race, nationality or ethnicity was the reason for Ms Payne, Ms McFarlane or Joan speaking about the claimant (or the subsequent actions of management). The evidence establishes that there was already an ongoing and deteriorating interpersonal relationship between the claimant and Ms Payne. The claimant believed that Ms Payne and others were discussing her behind her back. Evidence of Mrs Girvan corroborated that the claimant was being talked about by others behind her back at around that time. Ms Payne's explanation, namely that she wished to know whether the claimant had returned from her break so that she could take her own break, was accepted by the Tribunal. There was no evidence that this was one of the occasions when Ms Payne (or others) was criticising the claimant to her colleagues. The Tribunal accepted that Ms Payne and others were taken aback by the claimant confronting them. The incident arose from workplace tensions, mutual distrust and a sense of grievance by the claimant that she was being talked about by her colleagues, rather than anything connected with race, nationality or ethnic origin.

108. The Tribunal also considered the actions of management. The claimant genuinely perceived that management accepted Ms Payne's version of events whilst questioning the claimant’s version and that she was unfairly required to work elsewhere following the facilitated conversation. Those perceptions were understandable in light of the information the claimant had at the time.

Nevertheless, there was no evidence that Ms Bradley or any other manager acted as they did because the claimant was Turkish. The evidence did not disclose any comments, conduct, assumptions or stereotypes linked to the claimant's race or ethnicity. Nor was there any evidence that a non-Turkish employee in materially similar circumstances would have been treated differently by Ms Bradley or other managers.

109. The Tribunal has also taken account of the deficiencies in the respondent's later investigation concerning this Allegation 2. Significant witnesses, including Ms McFarlane and Ms Bradley, were not interviewed by Mr Peat and they were not called to give evidence before the Tribunal. The investigation therefore failed fully to explore the circumstances of the incident, including whether the protected characteristic of race was underpinning it. Those shortcomings formed part of the wider concerns identified by the Tribunal regarding the grievance process. However, even taking those shortcomings into account, the Tribunal ultimately concludes that the respondent has provided a non-discriminatory explanation for the treatment complained of. The evidence points to a workplace dispute arising from an already fractured relationship between colleagues and differing perceptions of events. The claimant's race was not a significant, conscious or unconscious factor in either Ms Payne's conduct or the management response that followed.

110. The Tribunal has considered whether Mrs Girvan or another non-Turkish employee was treated more favourably in comparable circumstances. The evidence did not establish any such difference in treatment. Mrs Girvan's evidence pointed to wider workplace difficulties affecting a number of colleagues rather than conduct directed towards the claimant because of race. The Tribunal is satisfied that a hypothetical non-Turkish comparator who had confronted Ms Payne and Ms McFarlane would have been treated in the same manner. This allegation therefore does not support an inference that race materially influenced the treatment complained of

111. Accordingly, whilst the Tribunal accepts that the claimant was upset by the incident, that she believed colleagues were speaking about her behind her back, and that aspects of the management response were unsatisfactory, the Tribunal is not satisfied on the balance of probabilities that the treatment occurred because she was Turkish or of Turkish ethnic origin.

112. This complaint is therefore not well-founded.

Allegation 3: January 2025 mislabelled item incident

113. The Tribunal found that the incident occurred and that Ms Payne made the comment, “Who would do that?”, in relation to a garment which had been incorrectly labelled. However, the Tribunal did not accept the claimant's interpretation of that comment. Having considered the evidence as a whole, the Tribunal concluded that the remark was not an accusation directed towards the

claimant, nor was it an attempt by Ms Payne to undermine, embarrass or criticise the claimant in front of a manager.

114. In reaching that conclusion, the Tribunal attached significance to the evidence obtained by Mr Peat from Ms Waddell, who was present during the exchange. Although Ms Waddell did not give evidence before the Tribunal, her account was that Ms Payne simply held up an item and remarked, in effect, “Who would do that?”, and that she did not understand the comment to be directed at the claimant. Ms Waddell also conceded that if there was something more to the comment, it was not picked up by her. The Tribunal accepted that evidence insofar as it was consistent with the surrounding circumstances and with the Tribunal’s assessment of what had occurred.

115. The Tribunal nevertheless accepts that the claimant genuinely perceived the comment as a criticism of her work. By January 2025, the relationship between the claimant and Ms Payne had become seriously fractured. The findings of fact demonstrate a history of conflict and interpersonal difficulties between them. Against that background, the claimant had become sensitive to interactions involving Ms Payne and, on this occasion, interpreted Ms Payne’s remarks through the lens of her previous experiences. The Tribunal considered that the claimant honestly believed that Ms Payne was attempting to undermine her. However, an honestly held belief does not necessarily reflect what objectively occurred. In this respect, whilst the claimant's evidence was credible, it was not reliable.

116. The Tribunal therefore preferred the evidence of Ms Payne and concluded that the remark was a spontaneous observation about an obvious labelling error rather than an allegation directed at the claimant. The evidence did not establish that Ms Payne would have acted differently had the claimant not been present. Nor did it establish that Ms Payne intended to draw managerial attention to the claimant or expose her to criticism. From the evidence of both Ms Payne and Mrs Girvan (the claimant’s actual comparator for this Allegation), Ms Payne raised issues of labelling errors with Mrs Girvan and did not report her to management. On the facts found, this was not comparable circumstance because Ms Payne was not raising a labelling error with the claimant.

117. The Tribunal therefore turned to whether race played any part in the incident. The Tribunal was satisfied that the claimant had not established facts from which it could properly infer that race played any part in allegation 3. There was no reference to the claimant's Turkish nationality or ethnic origin. There was no racial language, stereotype or racially charged conduct.

118. The claimant relied upon Mrs Girvan as an actual comparator. However, the Tribunal was not satisfied that materially similar circumstances arose. In any event, Mrs Girvan's evidence did not demonstrate more favourable treatment attributable to race. The Tribunal is satisfied that a hypothetical non-Turkish Customer Assistant present during the same labelling incident would have been treated no differently. Accordingly, neither the actual nor hypothetical

comparator exercise supports an inference of race discrimination. The evidence instead pointed towards an ongoing deterioration in workplace relations between two colleagues whose interactions had become strained and susceptible to misunderstanding.

119. In any event, even if the burden of proof were treated as having shifted, the respondent provided a clear and convincing non-discriminatory explanation for the treatment complained of. The Tribunal accepted that Ms Payne's comment related solely to the labelling error itself. The claimant misconstrued the remark because of the pre-existing difficulties in their working relationship. The Tribunal found that race was not a conscious or unconscious factor in Ms Payne's conduct. Nor was Ms Waddell turning a blind eye or ignoring inappropriate conduct by Ms Payne towards the claimant.

120. Accordingly, the Tribunal concludes that the treatment complained of was not because the claimant was Turkish or of Turkish ethnic origin. The complaint concerns a workplace misunderstanding arising within the context of an already damaged relationship between colleagues rather than unlawful discrimination on grounds of race.

121. This complaint is therefore not well-founded.

Allegation 4* : *March 2025 bra-fitting appointment incident

122. The Tribunal found that, on 11 March 2025, the claimant's first shift following a period of bereavement leave after the death of her father, she assisted a customer who had attended for a scheduled bra-fitting appointment. The Tribunal accepted that the customer had in fact booked an appointment with Ms Payne, who was familiar with that customer's circumstances and whom the customer had specifically requested. The claimant did not check the appointment record and therefore did not realise that the booking had been made with Ms Payne. The claimant proceeded to carry out the appointment herself, believing that she was simply performing her duties as the rostered bra fitter.

123. The Tribunal further found that, after the appointment had concluded and the claimant had returned from her lunch break, Ms Payne approached her and accused her of having "stolen" her customer appointment. The claimant perceived this accusation as unjustified and upsetting, particularly given the circumstances of her recent bereavement and her belief that she had done nothing wrong. The exchange contributed directly to her decision to submit her formal grievance dated 21 March 2025.

124. The Tribunal accepted that the claimant was genuinely distressed by the incident and that she regarded Ms Payne's conduct as another example of the hostile treatment that she believed she had experienced over a prolonged period. The Tribunal also accepted that the relationship between the claimant and Ms Payne had by this stage become seriously strained, with each tending

to view the actions of the other through the prism of previous disagreements and unresolved grievances.

125. The central issue, however, is whether Ms Payne’s reaction occurred because of the claimant's race. Having considered the evidence as a whole, the Tribunal concluded that it did not.

126. The Tribunal was satisfied that there was an obvious and entirely non-discriminatory explanation for the disagreement. The customer had requested an appointment with Ms Payne. The claimant, unaware of that fact, proceeded with the bra fitting. Ms Payne believed that a customer who had specifically asked to see her had instead been seen by another bra fitter. Whether or not Ms Payne was justified in accusing the claimant of "stealing" a customer (or the claimant was justified in responding with “you did it to me”) is not the question before the Tribunal. The relevant point is why Ms Payne acted as she did. Her reaction to the claimant arose from her perception of what had happened to a customer booking and not from anything connected to the claimant's Turkish nationality or ethnic origin.

127. The Tribunal found no evidence of racial language, racial stereotyping, references to nationality or ethnicity, or any other facts capable of linking Ms Payne's conduct to the claimant's protected characteristic.

128. The Tribunal has considered the claimant's reliance upon Mrs Girvan as an actual comparator. The evidence did not demonstrate that Mrs Girvan, or any other non-Turkish colleague, was treated more favourably in comparable circumstances involving customer appointments or customer allocation. Mrs Girvan's evidence instead reflected wider interpersonal difficulties within the department. The Tribunal is satisfied that a hypothetical non-Turkish bra fitter who had undertaken the appointment in the same circumstances would have received the same response from Ms Payne. Accordingly, the comparator evidence does not support an inference that race influenced Ms Payne's conduct. There was no evidence that a non-Turkish bra fitter who had dealt with a customer who had specifically requested Ms Payne would have been treated differently. The incident was fundamentally a dispute about customer allocation and appointment arrangements.

129. The Tribunal has also considered the broader context of the parties' relationship. The evidence established that communication between the claimant and Ms Payne had deteriorated significantly by March 2025. That deterioration provides a plausible explanation for the manner in which the incident unfolded and for the claimant's perception of it. However, interpersonal hostility, workplace conflict and poor working relationships do not, without more, establish direct race discrimination. The Tribunal was not satisfied that race was a conscious or subconscious factor in the treatment complained of.

130. Further, even if the claimant had established facts sufficient to shift the burden of proof, the respondent provided a cogent and convincing explanation for the

incident. The Tribunal accepted that the disagreement stemmed from the claimant's failure to check the appointment details and from Ms Payne's belief that a customer who had requested her specifically had not been provided with the service expected. The evidence demonstrated that the respondent's explanation was wholly unrelated to race.

131. Accordingly, the Tribunal concludes that the treatment complained of arose from a disagreement concerning a customer appointment within the context of an already difficult working relationship between colleagues. The Tribunal is not satisfied that the claimant was treated as she was because she was Turkish or of Turkish ethnic origin.

132. This complaint is therefore not well-founded.

No case to answer after disciplinary investigation

133. An investigator may legitimately conclude there is insufficient evidence where: (i) there are no witnesses; (ii) the accounts are equally plausible; (iii) there is no contemporaneous evidence; (iv) there is nothing supporting one account over the other. In those circumstances, a conclusion that allegations are unsubstantiated may be reasonable.

134. However, an investigator should normally still consider: (i) the credibility and reliability of the witnesses; (ii) consistency of accounts; (iii) corroborative evidence; (iv) surrounding circumstances; (v) whether there is evidence of a pattern of behaviour. A conclusion that there is "no case to answer" purely because the respondent denied the allegations would generally be vulnerable to criticism.

135. There are features supporting Mr Peat's conclusion of no case for Ms Payne to answer. Mr Peat interviewed the claimant, Ms Payne, Mrs Girvan and Ms Waddell (although he did not have a notetaker present and the minutes do not ensure that an accurate account of what was said was made). Mr Peat also considered each of the incidents relied upon. He obtained accounts from witnesses. Ms Waddell's evidence did not support the claimant's account of the January 2025 incident. Ms Girvan was unable to identify a specific example of racial mistreatment.

136. On the other hand, there are features which a Tribunal considered were overlooked, including: the evidence from Mrs Girvan that provided some general support for the claimant's broader complaint by describing a pattern whereby Ms Payne disagreeing with the claimant and influencing others against her – which is supportive of an allegation of workplace bullying. The report appears to focus heavily on whether individual incidents could be proved, and did not take into account whether there was evidence of a cumulative pattern of behaviour by Ms Payne towards the claimant. There was limited assessment of credibility or reliability of Ms Payne and the claimant. The existence of competing accounts does not of itself prevent a disciplinary process from considering the matter. Mr Peat's conclusion uses the phrase "one word against

another with no conclusive proof". An investigator is not usually expected to find conclusive proof before recommending that a matter proceed further. Mr Peat appears to have resolved evidential uncertainties in favour of Ms Payne. The Tribunal also notes that the outcome of the investigation was communicated to Ms Payne and management by 12 June 2025 but was not communicated to the claimant until 26 August 2025. Further, the outcome letter did not provide the claimant with a right of appeal, notwithstanding the provisions of the respondent's grievance procedure.

137. The Tribunal emphasises that the claimant does not advance, and the agreed List of Issues does not include, a separate complaint that the investigation conducted by Mr Peat was itself an act of direct race discrimination. The Tribunal therefore makes no finding that the shortcomings identified in the grievance and disciplinary process amounted, without more, to unlawful discrimination. However, the Tribunal is entitled to take those matters into account as part of the surrounding factual context when considering section 136, Equality Act 2010 regarding the burden of proof. The investigation was deficient in a number of respects, including the limited enquiry undertaken, the failure adequately to address corroborative evidence supportive of the claimant's account, the failure fully to assess credibility and reliability, and the finding of no case to answer where there was evidence capable of supporting aspects of the claimant's complaint and unexplained preference given to Ms Payne's account. Those deficiencies, considered alongside the claimant's evidence and the evidence of Mrs Girvan concerning the underlying workplace dynamics, are capable of raising a *prima facie* concern. Standing back and considering the evidence in the round, the Tribunal is satisfied that there are sufficient facts from which it could conclude, in the absence of an adequate explanation, that the treatment complained of may have been because of race.

138. The Tribunal has taken into account the evidence concerning the respondent's cyber-security incident in April 2025 and accepts that it was a significant and genuine operational challenge affecting many aspects of the respondent's business. The Tribunal also accepts that the incident may reasonably explain some delay in progressing the investigation and communicating the outcome (but not a 75-day delay in telling the claimant the outcome of her grievance). However, the cyber incident does not adequately explain a number of the shortcomings identified above, including the failure to speak to relevant witnesses, the limited assessment of credibility and reliability, the failure to consider fully the significance of Mrs Girvan's evidence which as supportive of the claimant’s complaints, or the omission of any appeal information from the outcome letter. The cyber incident did not appear to have any bearing on those matters.

139. Once the burden of proof is treated as having passed, the respondent has satisfied the Tribunal, on the balance of probabilities, that neither the conduct relied upon in Allegations 1 to 4 nor the management responses to those matters occurred because of the claimant's Turkish nationality or ethnic origin.

The Tribunal accepts the respondent's non-discriminatory explanations for those matters and concludes that race was not a conscious or unconscious reason for the treatment established.

Allegation 5 : April 2025 discussion regarding a transfer to the Food department

140. The Tribunal found that, on 19 April 2025, the claimant met with Ms Adkins, the Store Manager, to discuss the possibility of a transfer to the Food department within the Stirling store. The Tribunal accepted the evidence of Ms Adkins that this discussion arose because operational requirements were changing within the store, with fewer hours available in Fashion and increased staffing requirements within Food. The Tribunal also accepted that Ms Adkins was aware that, in her grievance, the claimant had indicated that one possible resolution to the difficulties she experienced with Ms Payne would be for her to move to another department within the store.

141. The Tribunal found that the claimant became upset and tearful during the conversation. Given the timing of the discussion coming shortly after her meeting with Mr Peat, Ms Payne’s comment in November 2023 (as found in Allegation 1) that the claimant move to Food if she wanted to work early shifts and Ms Bradley’s temporary move of the claimant to footwear, the Tribunal understood why the claimant viewed the proposal with suspicion and concern.

142. However, having heard the evidence of both witnesses, the Tribunal preferred the evidence of Ms Adkins. The Tribunal accepted that the claimant misunderstood the purpose of the conversation. The evidence established that Ms Adkins was presenting the move as an option rather than a requirement. The Tribunal accepted her evidence that she repeatedly told the claimant that she did not have to move department and that the decision was entirely a matter for the claimant. The Tribunal rejected the claimant's contention that Ms Adkins was attempting to force, persuade or engineer her removal from the lingerie department.

143. The Tribunal further accepted that, after the meeting, the claimant went to the staff toilets to compose herself and that Ms Adkins followed her there and continued the discussion. The Tribunal considered this aspect of the incident carefully. Continuing a workplace discussion when an employee has retreated to a toilet area was unusual and, with hindsight, was capable of causing the claimant distress and misunderstanding. Nevertheless, the Tribunal accepted Ms Adkins' evidence as to her motivation. Her purpose was not to pressure the claimant but to ensure that the claimant understood that the proposed transfer was optional and that she was not being compelled to leave her department. The Tribunal accepted that the message repeatedly communicated by Ms Adkins was, "you don't have to go."

144. In these circumstances, the Tribunal concluded that a significant part of the claimant's complaint was not established as a matter of fact. The Tribunal did not accept that Ms Adkins attempted to persuade the claimant to move

department against her wishes. Rather, the evidence demonstrated that she sought to make the claimant aware of an option which she thought the claimant might wish to consider in light of the concerns raised in her grievance.

145. The remaining question is whether the treatment occurred because of the claimant's race. Even if the claimant's characterisation of events had been accepted, there was no evidential basis from which the Tribunal could infer that race played any part in the treatment. There were no comments, references or assumptions relating to the claimant's Turkish nationality or ethnic origin. Nor was there evidence that the proposal arose because of race. The evidence instead pointed to two non-discriminatory reasons for the conversation: operational staffing considerations within the store and the claimant's own indication that she might be willing to consider a move to another department.

146. The Tribunal also considered comparators. Mrs Girvan was not in materially similar circumstances to the claimant and therefore provides limited assistance as an actual comparator. The Tribunal accepts that any employee, irrespective of race or nationality, who had become similarly upset during such a discussion would have received the same reassurance from Ms Adkins that a transfer was not mandatory. A hypothetical non-Turkish comparator would therefore have been treated in the same way.

147. Accordingly, the Tribunal concluded that there were insufficient facts from which it could properly infer race discrimination. In any event, the respondent proved a clear, cogent and convincing non-discriminatory explanation for the treatment complained of. The reason for Ms Adkins' actions was her desire to discuss a staffing option and thereafter to reassure an upset employee that she was not required to move department. Race played no part whatsoever in that decision-making process.

148. The Tribunal therefore concludes that the treatment complained of did not occur because the claimant was Turkish or of Turkish ethnic origin.

149. This complaint is therefore not well-founded.

Allegation 6 : Absence management letter referring to dismissal as a possible outcome

150. The Tribunal found that, following a welfare meeting on 23 May 2025 during the claimant's sickness absence, Tracey Simm sent the claimant a letter dated 26 May 2025. The letter contained standard wording explaining that, if the claimant's absence continued or worsened, one possible outcome of the absence management process could be dismissal on the grounds of incapability due to ill health. The Tribunal accepted that the claimant perceived this wording as threatening and interpreted it as a warning that the respondent intended to dismiss her employment.

151. The Tribunal further accepted that the claimant was upset by receiving such a warning at what was effectively the beginning of the absence management

process. At that stage, dismissal was not actively under consideration and a number of welfare meetings and procedural steps would ordinarily have been required before any such outcome could arise. The claimant therefore viewed the inclusion of the warning as heavy-handed and intimidating.

152. The Tribunal was satisfied that the treatment relied upon by the claimant was established. The letter was sent and it contained the wording complained of. The Tribunal accepts that the claimant perceived the wording as detrimental and upsetting. In those circumstances, the Tribunal considered that there were sufficient facts to require consideration of the respondent's explanation.

153. Having heard the evidence, however, the Tribunal preferred the evidence of Tracey Simm regarding the origin and purpose of the wording. The Tribunal accepted that the relevant passage formed part of the respondent's standard absence management template and was routinely included in absence management correspondence issued to employees. The Tribunal accepted Ms Simm's evidence that managers were expected to use the standard wording and that it was not inserted because of anything particular to the claimant. Indeed, Ms Simm candidly accepted that she did not personally like the wording but understood that it was required by the respondent's process.

154. The Tribunal attached significance to the fact that substantially identical wording appeared in a later absence management letter. During cross-examination, the claimant initially believed that the later correspondence did not contain the same warning. However, she subsequently checked the documentation and informed the Tribunal that her recollection had been mistaken and that the later letter did contain the same standard wording. That evidence supported the respondent's contention that the wording formed part of a standardised process rather than a targeted communication directed specifically at the claimant.

155. The Tribunal therefore considered whether there was any evidential basis for connecting this treatment to race. The Tribunal found no evidence capable of linking the inclusion of the wording to the claimant's Turkish nationality or ethnic origin. There were no references to race, nationality, ethnicity or culture within the correspondence. Nor was there evidence that employees of a different race undergoing the same absence management process would have received different communications. On the contrary, the evidence established that the same template wording would have been used in welfare letters issued to all employees irrespective of race.

156. The Tribunal therefore accepted the respondent's explanation that the wording was included because it formed part of its standard sickness absence management procedure. The purpose of the wording was to notify employees of all potential outcomes of the process, including the possibility, however remote at that stage, of dismissal on capability grounds. The Tribunal was satisfied that race played no part, consciously or unconsciously, in the decision to send the letter in those terms.

157. The claimant's reliance on Mrs Girvan as an actual comparator does not assist in relation to this allegation. The Tribunal is satisfied that a hypothetical non-Turkish employee at the same stage of the absence management procedure would have received materially identical correspondence. The comparator evidence therefore does not support an inference of race discrimination.

158. Accordingly, whilst the Tribunal accepts that the claimant was upset by the wording and perceived it as threatening, it concludes that the respondent has established a clear and convincing non-discriminatory explanation for the treatment complained of. The inclusion of the warning arose solely from the operation of the respondent's standard absence management procedure and not because the claimant was Turkish or of Turkish ethnic origin.

159. This complaint is therefore not well-founded.

Overall assessment

160. The Tribunal has considered each allegation individually and has then stood back and considered the evidence as a whole. In doing so, it has considered the claimant's evidence, the evidence of Mrs Girvan, the history of the relationship between the claimant and Ms Payne, the management response to the claimant's concerns, the shortcomings identified in Mr Peat's investigation, the comparator evidence, and the cumulative effect of all matters relied upon by the claimant.

161. The issue is not whether the claimant was treated unfairly, criticised, excluded, upset or treated poorly by certain line managers. The issue is whether the treatment referred in Allegations 1-6 occurred because of race. The Tribunal has been careful not to assume that the absence of overtly racial comments means that race played no part. It has considered whether the treatment may have been motivated, consciously or unconsciously, by the claimant's Turkish nationality or ethnic origin.

162. Standing back and considering Allegations 1-6 and the entirety of the evidence cumulatively, the Tribunal is satisfied that it was not. There was no evidence of racial language, stereotyping or assumptions linked to the claimant's Turkish nationality or ethnic origin. Neither the evidence concerning Mrs Girvan nor the hypothetical comparator exercise demonstrated racially differentiated treatment. Instead, the evidence pointed to a dysfunctional workplace relationship characterised by interpersonal conflict, which led to mutual distrust and misunderstandings.

163. The Tribunal is satisfied on the balance of probabilities that those matters, rather than race, explain the treatment complained of. Considering the allegations both individually and cumulatively, the Tribunal concludes that the claimant was not treated less favourably because she was Turkish or of Turkish ethnic origin.

164. Accordingly, the complaint is not well-founded and is dismissed.

Date sent to parties 18 September 2026



SCHEDULE OF THE JUDGMENT AND WRITTEN REASONS

LIST OF ISSUES

JURISDICTION – TIME

1. The claim form was presented on 29 August 2025. The claimant commenced early conciliation on 9 June 2025, and a certificate was issued on 16 July 2025.

2. Have the discrimination complaints been made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

    a. Was the claim made to the Tribunal within three months (plus early conciliation extensions) of the act or omission to which the complaint relates?

    b. If not, was there conduct extending over a period?

    c. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

    d. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

        i. Why were the complaints not made to the Tribunal in time?

        ii. In any event, is it just and equitable in all the circumstances to extend time?

3. In particular, the respondent contends that any acts and/or omissions which allegedly took place on or before 10 March 2025 are prima facie out of time. The respondent denies that it would be just and equitable for the Tribunal to extend time for submission of the claim under section 123(1)(b) of the Equality Act 2010.

DIRECT RACE DISCRIMINATION (section 13 of the Equality Act 2010)

4. The claimant's claim is limited to direct race discrimination under section 13 of the Equality Act 2010 only. The protected characteristic relied upon is race (the claimant is Turkish).

5. Did the respondent (or any person for whose acts it is responsible) subject the claimant to less favourable treatment than it treated, or would have treated, others?

6. The claimant relies upon the following alleged acts of less favourable treatment:

   (a) **Allegation 1:** In November 2023, Lesley Payne ("Ms Payne") and Heather Bennett questioned the claimant as to why she was in work early, which the claimant says was humiliating.

   (b) **Allegation 2:** In March 2024, the claimant was allegedly "ganged up on" by Ms Payne and other colleagues.

   (c) **Allegation 3:** In January 2025, Ms Payne allegedly deliberately attempted to humiliate the claimant in front of a manager (Jacqui Waddell) by falsely accusing her of making an error with labelling.

   (d) **Allegation 4:** On 11 March 2025, Ms Payne allegedly accused the claimant of "stealing her appointment" and was verbally aggressive towards her.

   (e) **Allegation 5:** On 19 April 2025, Lindsay Atkins (Store Manager) allegedly followed the claimant into the toilet to try to persuade her to move department as a result of the complaint about Ms Payne. The claimant alleges she was treated less favourably than Ms Payne, who was not asked to change department.

   (f) **Allegation 6:** Following a welfare meeting during the claimant's sickness absence, Tracy Simm (Team Manager) allegedly sent an email containing a "threat to dismiss" if the claimant's level of sickness absence did not improve.

7. If less favourable treatment is established, was the treatment because of the claimant's race?

8. The claimant has identified Gillian Girvan as her comparator. Is Ms Girvan in materially the same circumstances as the claimant?

REMEDY

9. If the claimant succeeds on any discrimination claim, what remedy, if any, is the claimant entitled to?

10. What award, if any, should be made for injury to feelings? In which band of the guidelines in *Vento v Chief Constable of West Yorkshire Police* (as updated) does any such award fall?