**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8002674/2025**

**Held in Glasgow on 31 August and 1, 2, 3 and 4 September 2026**

**Employment Judge P Rae**

**Ms P Opara** — **Claimant**
**In Person**

**Lloyds Bank PLC** — **Respondent**
**Represented by:**
**MrN.MacDougall,**

**Instructed by:**
**Mr J Barron,**
**Solicitor**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that:

1. The claimant's protected disclosure (detriment) complaint is not well founded and is dismissed.
2. The claimant's victimisation complaint is not well founded and is dismissed.
3. The claimant's direct race discrimination complaint is not well founded and is dismissed.
4. The claimant's direct sex discrimination complaint is not well founded and is dismissed.
5. The claimant's unfair dismissal claim is not well founded and is dismissed.
6. The claimant's breach of contract claim is not well founded and is dismissed.

## WRITTEN REASONS

### Background

1. The claimant presented an ET1 on 5 November 2025 with complaints of detriment on the ground of having made a protected disclosure, victimisation, direct race discrimination, direct sex discrimination, unfair (constructive) dismissal and breach of contract.

2. The claimant engaged in early conciliation with ACAS between 22 September 2025 and 3 November 2025. Accordingly, the substantive claim (or at least parts thereof) were brought in time. An ET3 was lodged on 5 November 2025.

3. A List of Issues (p71) had been prepared with the assistance of Judge Hoey at a Preliminary Hearing (Case Management) on 17 February 2026. Those issues are listed in the Appendix.

4. The parties had prepared and agreed a joint bundle extending to 679 pages. A supplementary bundle was also prepared, extending to 90 pages containing witness statements and additional documents.

### Preliminary Issues

5. The case had originally been listed for an in-person hearing. The respondent made a successful application for the case to be held as a hybrid hearing. Whilst this was of disappointment to the claimant as she wished the witnesses to be physically present, that matter had been addressed as part of case management. Two witnesses and the claimant attended in person. The others by CVP.

6. The claimant introduced a late witness, which I allowed. To allow for timing, I directed that Remedy would be a matter addressed separately from liability.

7. I have addressed the fact that a witness (Mr Grothouse) whom the claimant wished to cross examine, was not called by the respondent to give evidence. I deal with my assessment, conclusions and decision to proceed in the ‘witness’ section undernoted.

8. I have assessed jurisdictional points as they relate to time-bar relative to the direct discrimination complaints in the body of this Judgment having heard evidence on the matter.

### Findings in Fact

9. The claimant was employed by the respondent between 17 May 2023 and 2 July 2025. The claimant was subject to a disciplinary hearing for gross misconduct for call avoidance. She resigned before the hearing.

10. The claimant's ethnic origin is Nigerian and she is female.

11. The respondent is a large financial services institution.

12. When the claimant commenced employment she worked at the respondent's offices in Birmingham. The claimant was employed as a Customer Adviser (later renamed to a 'Customer Support Advisor II'). The claimant worked in the respondent's contact centre servicing inbound customer calls.

13. The claimant's contract of employment (p157 - 176) provides "*the Company will continually monitor Your performance and suitability to act in Your role*" (p159, 165).

14. In or around January 2024 the claimant moved to Glasgow where the respondent also have premises. By this time the claimant was working from home, having satisfied the respondent that she could be trusted to do so and been 'licenced' as such. Mr Holmes (Team Manager) was her manager.

15. The claimant enjoyed a good working relationship with Mr Holmes until on or around 20 January 2025 whereupon he initiated the respondent's informal performance management process, known as "*Back to Your Best*". Mr Holmes' concerns related to the claimant's 'Quality and Efficiency' (Q&E) when servicing calls. This process does not require engagement with human resources and is designed to informally address performance concerns (p307). The plan is designed to be supportive. The plan is filed in the respondent's HR system, 'Workday', where it is visible to the employee and line manager.

16. Mr Holmes' line manager was Ms Wilson, Senior Team Manager. Mr Holmes discussed the plan with her before implementation and she supported its use.

17. When the claimant found out that she had been placed on the plan she queried it with Mr Holmes (p654). Mr Holmes explained that the plan was "an informal coaching plan". The claimant was concerned that it was recorded on Workday.

18. At this stage there were no concerns at all or suggestions of 'call avoidance' or 'call cutting' relating to the claimant. These are practices where a contact centre agent takes steps to avoid servicing a customer call or disconnects a customer before the natural end of the call. These were not issues Mr Holmes had with the claimant.

19. The claimant was managed through the plan between 20 January 2025 and 5 March 2025 when it was closed by Mr Holmes "*due to a big improvement*" (p307).

20. The following day, 6 March 2025, the claimant emailed Ms Wilson (Mr Holmes' manager) requesting to be assigned to a different manager. That email was blind copied to Mr Vickers, Head of Personal Banking.

21. The email (p308) read (which is particularly relevant to these proceedings):

    (a) "*Dear Nicola,*

    (b) *I hope this email finds you well. I am writing to formally request a change of reporting manager due to ongoing challenges in my professional relationship with my current manager Jonathan Holmes. Unfortunately I have been experiencing uncomfortable work environment under his management which has been affecting my mental health.*

    (c) *Despite my efforts to maintain a good professional working relationship, I have encountered repeated instances of unfair treatment, lack of support and inappropriate remarks. These challenges have made it increasingly difficult for me. I love my job, and it makes me happy hearing customers complaint resolved but lately I seem to have been working on eggshells.*

    (d) *I believe that a change in reporting structure would not only improve my work environment but allow me to perform at my best and continue to contribute to the company's success. I am open to discussing potential solutions and alternative reporting arrangements that would be beneficial to both me and the organisation at large.*

    (e) *I truly appreciate your time and consideration in addressing the last issue that I had. Please let me know a convenient time to discuss this further. I remain committed to my role and the company's objectives and hope for a resolution that allows me to work in a more constructive and supportive environment.*

    (f) *I am looking forward to your guidance on the next steps."*

22. Ms Wilson was not minded to immediately grant the claimant's request. Instead, on or around Monday 10 March she called the claimant on to discuss her concerns and explore a resolution. Ms Wilson believed that there was potential to resolve the issues by informal mediation, facilitated by her.

23. Mr Holmes did not see that email initially. He became aware of it when Ms Wilson scheduled the mediation session later that month.

24. Between 10 March 2025 and 18 March 2025, the claimant was absent to undergo a fertility related medical procedure. She returned to work on 19 March 2025, after the expiry of a "fit note".

25. A confidential mediation meeting took place on 25 March 2025 attended by the claimant, Mr Holmes and Ms Wilson. It was not intended that a record of that discussion was made – the meeting being confidential. However, the claimant made a covert recording unbeknown to Mr Holmes and Ms Wilson. A transcript of that recording was produced by the claimant (page 262 - 268). That transcript was only made available after these proceedings commenced. The transcript is accompanied by an automated summary (p268).

26. Ms Wilson had hoped that both parties could "*have their say and come to an agreed outcome that meant both parties could continue working together*" (ws30, 12)

27. During the meeting the claimant's concerns were discussed. Mr Holmes had the opportunity to respond to those concerns. The claimant raised an incident involving a customer who had displayed racist behaviours and, in particular, her dissatisfaction with how Mr Holmes had responded to that incident. The claimant also raised Mr Holmes' responses to her various absences to attend medical appointments, particularly related to dental and specialist medical appointments. The claimant suggested that Mr Holmes' approach was confrontational. That allegation was surprising to Ms Wilson.

28. Mr Holmes was also "*very surprised*" that the claimant wanted a different manager, particularly given he had just satisfactorily signed her off the 'Back to Your Best' plan. He considered the matters raised by the claimant had come "*out of the blue*".

29. Ms Wilson was content with the way the meeting had proceeded. She did not find the meeting "*awkward or unproductive*" (WSp31, 17). At the conclusion of the meeting Ms Wilson was not immediately minded to move the claimant, believing matters could be remediated.

30. Thereafter the claimant contacted Ms Wilson privately asking to meet with her. They had a call. The claimant alleged that Mr Holmes was being racist towards her. Ms Wilson asked for "*evidence, facts even timelines*" (WS p31, 18). No specific examples were provided by the claimant. Ms Wilson was not presented with any relevant evidence in that regard, beyond the claimant's allegation of racism against Mr Holmes.

31. Ms Wilson concluded that there was no evidence of racism, but decided to move the claimant teams nonetheless.

**Team Transfer**

32. On or around 31 March 2025 the claimant was moved teams as requested. She was moved to Mr Grothouse's team.

33. A handover took place between Mr Holmes and Mr Grothouse as was expected. This was not documented, nor was there an expectation that it was. Mr Holmes provided Mr Grothouse with the basic information that would be required for Mr Grothouse to take over management of the claimant. Day-to-day matters were discussed concerning the claimant, including performance and the recently successfully concluded 'Back to Your Best' plan. Mr Holmes did not discuss the reasons behind the transfer with Mr Grothouse or what was discussed during the confidential mediation. He considered those matters confidential and not relevant to management of the claimant going forward.

34. When the claimant moved to Mr Grothouse's team, Mr Holmes did not (and never had) any concerns about call avoidance or call cutting by the claimant. Call cutting or call avoidance were not discussed between the two managers.

35. Mr Grothouse's manager, Mr Venters was aware that the move had taken place due to a "relationship breakdown" but he also had no further information beyond that.

**Conduct Concerns Call Avoidance / Call Cutting**

36. As found above, there were no concerns about the claimant undertaking call avoidance or call cutting. The concerns addressed in the 'Back to Your Best' plan had been related to quality and efficiency, not call avoidance.

37. On 6 April 2025 (after the claimant had moved teams) Mr Grothouse's team were being monitored by Ms Anthony, another manager whilst Mr Grothouse was absent. Ms Anthony identified that the claimant was using an "AUX" status, which was not permitted as it prevented the claimant from receiving calls. Ms Anthony messaged the claimant on Teams asking "*is there a reason you are in aux work at the moment? Is everything okay?*" (p431). The claimant suggested she had been adding notes to a customer account. Ms Anthony replied stating "*that would put you in acw and not aux work, did you log out and then back in again?"*. Ms Anthony went on "*…if it's going to be any longer than a minute, you note it down as a log out. You shouldn't be in aux work*".

38. On his return from absence Ms Anthony raised this exchange as a concern with Mr Grothouse. This first raised the issue of call avoidance with Mr Grothouse.

39. Mr Grothouse reported to Mr Venters (Senior Team Manager). Mr Grothouse and Mr Venters discussed Mr Grothouse's concerns related to the claimant's telephony behaviour and it was agreed to instruct a "Trace Report". A Trace Report is a detailed breakdown of when an employee is using each call status and how each individual call is

terminated (i.e. whether it is the customer terminating the call or agent). Mr Venters supported the instruction of a trace report.

40. A trace report is more detailed than the standard 'adherence report' that would normally be available to a line manager. The trace report details more information about each individual call serviced. Trace reports are typically used when there is concern about an employee's adherence or telephony behaviour. In this case the issues being explored were the claimant's use of the "AUX" status and her overall 'adherence' (i.e. being logged in and out during the shift).

41. A first trace report was run covering the claimant's calls between 2 May 2025 and 9 May 2025. On reviewing those initial calls, Mr Grothouse had further concerns about the claimant's call activity.

42. On 12 May 2025, Mr Grothouse raised these concerns with the respondent's Human Resources function. Calls with Human Resources took place on 13 and 14 May 2025 (p290). HR recorded "*a trace has shown 7 disconnected calls over the course of a week*". The output of that was that a further two-week trace was to be undertaken to strengthen the evidence.

43. A second trace report was undertaken for calls between 19 May and 25 May 2025.

44. On 27 May 2025, Mr Grothouse contacted Human Resources again (p292). The note records that "*{the claimant} has been identified as toggling states and ending customer calls before their natural end*".

45. On 29 May 2025 a further call took place between Mr Grothouse and Human Resources. The record reads "*This new data substantiates the LM's initial concerns, providing clear examples of call disconnection and changing of telephone states to avoid handling calls.*" (p294)

46. Mr Grothouse discussed the matter with Mr Venters and it was decided that the matter would be escalated for disciplinary investigation.

47. The case was passed to the Human Resources investigation team who (the unnamed person records) "*reviewed the detail on the report and have now requested an independent Investigation Manager who will be in touch to discuss your concerns once assigned.*"

48. The respondent operates an independent Investigations and Hearings team. Ms Martin-Chicharro worked in that team as an Investigator. She was an experienced investigator and was appointed on 4 June 2025 to investigate the call avoidance matter concerning the claimant. Call avoidance is a common reason for investigations being undertaken and, in the context of the call centre environment, is considered serious.

49. Ms Martin-Chicharro had no knowledge of the concerns/complaints made by the claimant in March 2025 concerning Mr Holmes. She had no reason to believe that the investigation had been commissioned for any other reasons beyond suspected call cutting or avoidance, of which there was evidence from the trace reports.

50. Ms Martin-Chicharro listened to the calls in question. She identified instances of calls being terminated before they had reached their natural conclusion, specifically where the claimant had become frustrated with the customer or where the claimant had said she would transfer the customer to another department but instead appeared to deliberately terminate the call.

51. The respondent's trace report records are such that they can distinguish the difference between a call being terminated by an agent deliberately; terminated by the customer; or; terminated by reason of a fault (e.g. an internet disconnection). In respect of the first category, there is positive evidence of the agent disconnecting the call by pressing a button.

52. Having listened to the calls in question Ms Martin-Chicharro invited the claimant to an investigatory meeting on 11 June 2025 to discuss her findings. The claimant was given one hour's notice of this meeting, as is the respondent's practice in such cases. The claimant was advised that she could bring a colleague or union representative to the investigation meeting (albeit with only one hour's notice).

53. On receipt of the invitation to the meeting the claimant asked Mr Grothouse what the background to the meeting was. Mr Grothouse was evasive and did not answer the question to the claimant's satisfaction. He was, however, aware that this was an investigatory meeting.

54. The claimant attended the investigation meeting. She explained her understanding of 'call avoidance' and 'call cutting' and the use of the 'AUX' state. The allegations of call avoidance and call cutting were then put to her. A minute of that meeting was produced (p432 - 442). During the investigatory meeting a number of calls were listened to and the claimant asked for an explanation as to why she terminated them before their natural conclusion.

55. In all the investigation revealed 16 instances of premature terminations, 10 instances of a customer being told they would be transferred, but instead were disconnected and 100 instances of "toggling state" from ACW to AUX (which was a recognised call avoidance technique).

56. During an adjournment, Ms Martin-Chicharro spoke to Mr Grothouse indicating her belief that there was a disciplinary case to answer and proposing that the claimant was suspended to prevent further instances of customer disruption. Mr Grothouse agreed with Ms Martin-Chicharro's recommended course of action. Ms Martin-Chicharro then advised the

claimant that she was to be suspended which she confirmed in writing (p443).

57. Ms Martin-Chicharro prepared a disciplinary investigation report (p448, 450-453). She recorded the aforementioned concerns and the claimant's explanation including that she had experienced "*system issues*". Ms Martin-Chicharro noted that such system issues would not account for the trace report recording deliberate call terminations by the claimant. Ms Martin-Chicharro did not explore the claimant's "*system issues*" beyond listening to the claimant's account and noting it.

58. Having established a disciplinary case to answer, the case was then assigned to Ms Davies (Investigations & Hearing Manager) who was responsible for scheduling and hearing the disciplinary case against the claimant. She was independent.

59. On 20 June 2025 Ms Davies wrote to the claimant inviting her to a disciplinary hearing on 27 June 2025 (p454 - 458). The allegations set out in the letter were:

    (a) *"between 2nd May 2025 and 27 May 2025, you engaged in a range of behaviours that may amount to Customer Avoidance Techniques, including*

        (i) *Releasing 16 customer calls before the natural end of the call, as detailed in the attached trace report.*

        (ii) *Toggling between After Call Work (ACW) and AUX status in the region of 100 occasions before going into AVAIL, including at the end of shifts, in a manner that appears inconsistent with expected call handing behaviours.*

60. It was alleged these behaviours were in contravention of the '*Groups Personal Behaviour Policy Standards'* which requires "*you always act in the best interest of our customers to ensure they get the experience they deserve*" and "*make sure you follow any policies, standards and processes and procedures, so you can deliver good customer outcomes*". The claimant was advised that she had the right to be accompanied to the disciplinary hearing and that dismissal (with or without notice) was a possible consequence.

61. The original date (27 June 2025) was not suitable for the claimant or her union representative and so two alternative dates were proposed by Ms Davies (30 June and 1 July 2025). Those dates were also not suitable for the claimant. Instead, the claimant proposed 7 July 2025, which Ms Davies agreed to. The claimant was advised by Ms Davies that if she did not attend on 7 July 2025 a decision would be made in her absence.

62. The claimant resigned on 2 July 2025 (p459) with immediate effect. The disciplinary process was discontinued after that.

63. The claimant resigned in response to Ms Davies' assertion that the hearing would proceed in the claimant's absence if she did not attend on 7 July 2025. The claimant considered this to be the 'last straw'. In her resignation letter the claimant alleged "*micromanagement, discriminatory treatment, and what I can only describe as a targeted and unjust scrutiny of my performance*".

**Grievance**

64. On 8 August 2025, after her employment had ended, the claimant wrote to Mr Pember (Head of Personal Banking) to raise concerns about her treatment when working for the respondent. The claimant alleged that details of the confidential March 2025 (p465) meeting had been shared with Mr Grothouse and that she had been the subject of "victimisation" as a result. The claimant also stated in her grievance, in respect of the disciplinary hearing, "*When I requested a more suitable date, I was told a decision would be made without me if I asked to postpone again. That left me feeling coerced, unsupported, and convinced that the process would not be fair"*. The claimant then explained that she had "*decided to resign, having lost faith in the fairness of the internal procedures and how my situation was being handled*".

65. Mr Pember replied to the claimant on 19 August 2025 explaining that the claimant's email had been passed to the HR team to be addressed in accordance with the respondent's "*post-employment grievance process*" (p467).

66. Ms Quin, from the respondent's Investigations and Hearings Team was appointed to hear the grievance. She wrote to the claimant on 20 August 2025 (p471) explaining that as the claimant was "*no longer employed there was no legal obligation for us to hear your grievance*". She explained that, as such, the usual grievance procedures would not apply. However, she explained that she would indeed investigate the concerns raised, speak to witnesses and then write to the claimant with her findings.

67. The claimant responded to Ms Quin (p473) stating that she had reported:

> "*concerns about my former manager to my Senior Team Manager, Nicola Wilson regarding micromanagement and discrimination. I believe this "call avoidance" allegation was orchestrated to discredit me after I interviewed successfully for the Senior Fraud Advisor role".* She went on to state "*the timing of the tracer, combined with the false allegation, strongly suggests that this was part of a targeted campaign to undermine my progression*". She concluded by asking whether her reference to prospective employers would refer to call avoidance.

68. As part of her investigation Ms Quin first met with Ms Wilson on 10 September 2025 (Mr Holmes' line manager, who had led the mediation). A record of that meeting was available as well as an AI call transcript (p475-476, 477-487). Ms Wilson explained that there had been a "*sound basis*" for the initial engagement of the 'Back to Your Best' plan. Ms Quin was told that, following its implementation, there had been a "*clear and sudden*" (ws42, 9) breakdown in the relationship between the claimant and Mr Holmes. Ms Quin was told that Ms Wilson had formed the view that it was best to move the claimant to allow a "*fresh start*". Ms Quin was also told that there were no call avoidance concerns under Mr Holmes. There was no evidence available to Ms Quin of discrimination.

69. Ms Quin also explored complaints raised about the claimant's time off for medical specialist appointments. She found that Ms Wilson and Mr Holmes had been "*very supportive*" (ws43,10). She concluded that there was "*no evidence*" to suggest that the claimant had been:

    (a) "*forced to use breaks or holidays to attend appointments, or had not been allowed paid time off to attend … specialist appointments where appropriate. {The claimant} had been asked to arrange other general medical or dental appointments…to times outside of her shift patterns, which was a reasonable request from the business and in accordance with policy*" (ws43,10).

70. Ms Quin did not find that confidentiality had been breached in respect of the claimant moving teams from Mr Holmes to Mr Grothouse.

71. Ms Quin interviewed Mr Grothouse on 12 September 2025 (p488 – 497). Her evidence was that (W43, 13) "*during the handover meeting no information was shared beyond standard performance and attendance information*". She also found that the claimant "*had been placed on trace monitoring because Hannah Anthony, another Senior Manager, had initially mentioned to him that {the claimant} had been displaying concerning telephone behaviours. {Mr Grothouse} then placed {the claimant} on trace monitoring shortly afterwards to investigate this further*".

72. Ms Quin concluded that the trace report process and subsequent investigation was "*entirely unrelated*" to the performance concerns Mr Holmes had. She concluded that Mr Grothouse had been "*informed by a different manager {Ms Anthony} that she had some concerning activity*" relating to the claimant.

73. Ms Quin met with Mr Holmes on 12 September 2025 (p498 – 499). She concluded that "*the breakdown in his relationship with {the claimant} had been triggered by the Back to Your Best plan*" (ws44, 19). Ms Quin again confirmed that call avoidance had not been a concern whilst the claimant was in Mr Holmes' team.

74. Mr Grothouse and Mr Holmes did not discuss call avoidance, the email of 6 March 2025 nor the contents of the confidential mediation meeting.

75. There was no connection between the performance concerns that Mr Holmes had addressed through the 'Back to Your Best' plan and the subsequent call avoidance issues that gave rise to the disciplinary matter. They were two entirely separate matters. The former related to the claimant's performance whereas the latter related to her conduct. They were not connected.

76. Finally, Ms Quin met Ms Davies on 12 September 2025 in respect of the disciplinary invitation (p502 – 504). She found that Ms Davies had offered two alternative hearing dates from that originally proposed. Ms Davies then accepted a date proposed by the claimant (7 July 2025). In all four dates were proposed for the disciplinary hearing.

77. Ms Quin prepared and sent a grievance outcome letter detailing her findings. She did not uphold any aspect of the claimant's grievance (p509 – 512).

78. That concluded the internal matter which resulted in these proceedings being initiated.

**The 'Customer Incident' – September 2024**

79. On 17 September 2024, almost 6 months before the claimant requested changing manager, the claimant took a call from a customer who asked her if she was in the UK (p657 - 659). The claimant recounted that based on her accent the customer asked to be transferred to someone else.

80. The respondent operates a policy dealing with such incidents known as "*Dealing with Abusive, Threatening or Violent Customers*". It sets out the respondent's zero tolerance approach and what an employee should do. It encourages the recording of such incidents and what is expected (p177 - 183). This includes the option to transfer a customer to a recorded message which tells the customer the call is being terminated due to their conduct.

81. The claimant escalated the matter in 'real-time' to Mr Holmes using Microsoft Teams (at 2:28pm) where she said "*Hello Jon, I have got a customer on the phone. He rang up and asked if I was in the UK and I confirmed that I was and he goes he wants to speak with another person because of my accent but he could hear me properly. He asks to speak to a manager."*

82. Mr Holmes was engaged in a meeting with a colleague but replied immediately at 2:29pm to say "*just with another colleague – can you reach out in Manager chat*". He used a "*cry*" emoji to respond.

83. The claimant replied with "*alright thank you*" (2:29pm). Mr Holmes continued: "*explain why in the manager chat*".

84. A Teams 'Manager Chat' exists to deal with circumstances such as these. It is monitored by other managers who can step-in if required.

85. At 2:33pm Mr Treanor (another team manager) responded. He took time to speak to the claimant and address the situation. At 2:44pm, after they had spoken, the claimant messaged Mr Treanor to say that she felt "*valued*" and thanked him for his "*kind words*". She confirmed that she had taken some time away to compose herself. Mr Treanor told the claimant that she had handled the incident well. The claimant ended the conversation with Mr Treanor with "*thank you very much*".

86. At 2:40pm after he had finished his meeting, Mr Holmes sent the claimant a follow-up message on Teams saying "*hope you're ok after that call*" (page 658). The claimant replied (2:47pm) "*I am not okay to be honest. After speaking with Colin Treanor I felt valued*". Mr Holmes replied at 2:47pm to say that he was "*Glad Colin could help*" and asked (2:49pm) "*Do you need anything from me*". The claimant replied (2:50pm) "*Thank you Jon, I am alright*"

87. In such cases the respondent's policy is that the claimant should complete a form that records the incident. That will see the matter formally escalated. Such escalation could see the customer given a warning or otherwise having their account closed.

88. The claimant did not complete the required form. The matter ended there until it was raised as an issue by the claimant in the mediation meeting, some 6 months later. The claimant did not raise a grievance about the incident nor maintain that further remedial action was needed.

89. Mr Holmes considered the matter resolved and was pleased that the claimant was able to reach out to Mr Treanor in his absence and obtain support.

**Comment Around "Quitting"**

90. At some time between late 2024 and the claimant moving teams, she attended a team meeting on Teams. Ms Morgan was also in attendance. During the course of that call Mr Holmes, at some point, said to the team "*if you don't like the job you can quit*" or words to that effect. This was not directed at the claimant in particular.

**Absence, Absence Requests and Micro-Management**

91. The respondent operates an Attendance Policy Standard and has associated guidance dealing with absence and taking time off to attend

appointments. There is both '*colleague guidance'* (ws47) and '*management guidance*' (ws61).

92. The colleague guidance provides:

    (a) "*we recognise the importance of medical appointments for maintaining your health… we know that where possible you'll make medical appointments outside your working hours or at the start or end of your normal working day… we understand that there will be times where you can't control the timing of your medical appointments, like hospital visits. In these cases, talk to your manager to discuss your circumstances and find a solution that works for both you and the business…. Consider both paid and unpaid time off or making a temporary change to your working hours."*

93. The claimant had differing reasons for requesting time off during her time under Mr Holmes. She, on various occasions, informed Mr Holmes of her need for time off via Teams and in turn reminded him of it coming. The claimant's reasons for time off included dental and specialist medical appointments.

94. There were a number of apparent interactions where the claimant and Mr Holmes worked together to facilitate attendance at appointments, whilst balancing the needs of the business. There was no contractual entitlement to such time off, Mr Holmes exercised discretion and flexibility there were no instances of Mr Holmes declining or refusing attendance.

95. An absence report for the claimant was available (p280-286). There were 5 specific recorded instances of the claimant being granted paid leave to attend appointments: 1 October 2024, 23 October 2024, 1 November 2024, 11 February 2025 and 11 March 2025 all recorded as "Personal Appointments (Paid)".

96. Where the claimant was being granted paid leave there was a requirement to record on Workday and provide evidence of the appointment. Evidence was to be uploaded to 'Workday' for audit purposes.

97. The claimant and respondent worked together to deal with the claimant's appointments. These included granting paid time off, moving the claimant's break times to accommodate her appointments, allowing the claimant to make up lost time and/or exploring moving the claimant's days off to work around appointments.

98. These arrangements were all in keeping with the letter and spirit of the respondent's guidance which encouraged flexibility on both parts and allowed for managerial discretion.

99. Mr Holmes, at all relevant times, was operating within the bounds of the respondent's guidance and sought to accommodate the claimant

wherever possible, in particular the requirement to "*consider both paid and unpaid time off or making a temporary change to your working hours*".

**Medical Procedure (11 – 19 March 2025)**

100. The claimant was due to undergo a fertility related specialist medical procedure on the afternoon of 11 March 2025. That would also require some recovery time.

101. On the morning of 7 March 2025 (the day after the claimant sent Ms Wilson the email requesting a change in manager) the claimant messaged Mr Holmes on Teams concerning the procedure she was due to have on 11 March 2025. The claimant explained that she had a call with her pre-procedure team and that she would "*communicate the instructions to you as regard my resumption back to work. Thank you for your support*" (p551).

102. Mr Holmes enquired as to whether the claimant would be working in the morning of her operation as scheduled (11 March). The claimant replied "*I wont be able to concentrate on Tuesday to be honest*". Later that afternoon, the claimant then messaged Mr Holmes and asked for the day before the operation (10th) off as she did not "*want to stress*" (p552).

103. This was a last minute request which Mr Holmes granted. This involved seeking Senior Manager Approval (p552). This was despite the fact that Mr Holmes would be operating with a staff member down. At this time Mr Holmes was not aware of the claimant's email or the request to change manager.

104. The claimant underwent the procedure as planned on 11 March 2025. On 13 March 2025 (whilst the claimant was still off), Mr Holmes sent the claimant a Teams message saying that he "*hoped the operation went well*" and invited the claimant to call him that day, or the following day to "*catch up*".

105. On 17 March 2025 (whilst still off work), Mr Holmes again contacted the claimant via Teams (p555) asking how she was feeling. She replied explaining her recovery was going well. Mr Holmes enquired as to whether she was "*on track to return Wednesday to work* {19 March}*… do you need anything from me?*". The claimant replied saying "*not at the moment, I just want to recover fast and jump back to calls like before*".

106. At 9am on 19 March 2025 the claimant acknowledged her return to Mr Holmes on Teams (p556). She asked to amend the time of her planned 'Return to Work' meeting so she could attend her GP to have her stitches checked. Mr Holmes obliged.

107. The claimant had a 'Return to Work' meeting on 19 March 2025 with Mr Holmes which was documented (p304). The record of that

conversation notes that the claimant's had a 'fit note' that ran "*until 18 March 2025*".

108. There was no assertion at the time that the claimant returned prematurely or that, if she did, that she advised Mr Holmes of that. Based on the 'Return to Work' record the claimant had presented a fit note detailing she was unfit to work until 18 March 2025, which was 7 days after her procedure on 11 March. A return on 19 March would be expected unless a further fit note was presented.

**Employee Reward Points**

109. In her grievance letter to Mr Pember, the claimant made reference to having 110 'Game Changer' points. These points are part of an employee reward scheme that can be converted into high-street vouchers.

110. The scheme is discretionary and non-contractual. The respondent's policy is that an employee loses entitlement to unredeemed points on termination of employment. Due to the circumstances surrounding her suspension and termination, the claimant was unable to realise the value of the points and so convert them to vouchers (around £110). They were forfeited on her summary resignation.

**Relevant Law**

**Protected Disclosures**

111. Section 47B ERA provides:

(a) *"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."*

112. Commonly referred to as "whistleblowing", for a disclosure to be protected, it has to be a "*qualifying disclosure'* which is defined in section 43B(1) as:

(a) *43B.— Disclosures qualifying for protection.*

(b) *(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*

(i) *(a) that a criminal offence has been committed, is being committed or is likely to be committed,*

(ii) *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,*

(iii) *(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,*

(iv) *(d) that the health or safety of any individual has been, is being or is likely to be endangered,*

(v) *(da) that sexual harassment has occurred, is occurring or is likely to occur,*

(vi) *(e) that the environment has been, is being or is likely to be damaged, or*

(vii) *(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.*

(c) *(2) For the purposes of subsection (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.*

(d) *(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.*

(e) *(4) A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.*

(f) *(5) In this Part "the relevant failure" , in relation to a qualifying disclosure, means the matter falling within paragraphs (a) to (f) of subsection (1).*

113. I had regard to the Employment Appeal Tribunal's (EAT) decision in ***Williams v Brown UKEAT/0044/19*** which helpfully sets out the tests for consideration in such a claim***:***

(a) *"It is worth restating, as the authorities have done many times, that this definition breaks down into a number of elements. First, there must be a disclosure of* ***information****. Secondly, the worker must believe that the disclosure is made in the* ***public interest****. Thirdly, if the worker does hold such a belief, it must be* ***reasonably held****. Fourthly, the worker must believe that the disclosure tends to show one or more of the* ***matters listed in sub-paragraphs (a) to (f)****. Fifthly, if the worker does hold such a belief, it must be* ***reasonably held****".* {bold – my emphasis}

114. Whilst that case proposes a Tribunal work through all five component elements, I have reminded myself of the Employment Appeal Tribunal's decision in ***Lumb v Chief Constable of Manchester (UKEAT/0001/21/AT)*** where it was held that:

(a) "*While assessment of whether there has been a qualifying disclosure involves five questions, in certain circumstances it may not be necessary to answer all of them. For example, if it is decided that there has not been a disclosure of information it is not necessary, and may not be possible, to answer the remaining four questions*"

115. A claimant does not need to prove that the information disclosed is well founded or indeed true, they must simply show the matters detailed above are satisfied.

116. It is well established that there must be a disclosure of "*information*". In ***Cavendish Munro Professional Risks Management Ltd v Geduld UKEAT/0195/09***, the EAT decided that to qualify as a protected disclosure it must involve disclosing '**information'** (my emphasis) not simply voicing a concern or raising an unspecific allegation. The EAT held that:

(a) "*The ordinary meaning of giving "information" is conveying facts. In the course of the hearing before us, a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating "information" would be "The wards have not been cleaned for the past two weeks. Yesterday, sharps were left lying around". Contrasted with that would be a statement that "You are not complying with Health and Safety requirements". In our view this would be an allegation not information*."

117. In ***Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436***, the Court of Appeal held that there are occasions when an allegation may indeed also contain information. However, it was recognised that not every statement involving an allegation would do so. A tribunal should consider whether there was "*sufficient factual content and specificity*" to be capable of showing a relevant disclosure. The Court of Appeal held:

(a) *"35. The question in each case in relation to section 43B(1) (as it stood prior to amendment in 2013) is whether a particular statement or disclosure is a "disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the [matters set out in paragraphs (a) to (f)]". Grammatically, the word "information" has to be read with the qualifying phrase, "which tends to show [etc]" (as, for example, in the present case, information which tends to show "that a person has failed or is likely to fail to comply with any legal obligation to which he is subject"). In order for a statement or disclosure to be a*

*qualifying disclosure according to this language, it has to have a sufficient factual content and specificity such as is capable of tending to show one of the matters listed in subsection (1). The statements in the solicitors' letter in the Cavendish Munro case did not meet that standard.*

(b) *36. Whether an identified statement or disclosure in any particular case does meet that standard will be a matter for evaluative judgment by a tribunal in the light of all the facts of the case. It is a question which is likely to be closely aligned with the other requirement set out in section 43B(1) , namely that the worker making the disclosure should have the reasonable belief that the information he discloses does tend to show one of the listed matters. As explained by Underhill LJ in Chesterton Global Ltd v Nurmohamed [2018] ICR 731 , para 8, this has both a subjective and an objective element. If the worker subjectively believes that the information he discloses does tend to show one of the listed matters and the statement or disclosure he makes has a sufficient factual content and specificity such that it is capable of tending to show that listed matter, it is likely that his belief will be a reasonable belief."*

118. The burden of proof (per section 47B) is first on a claimant to show that they made a qualifying protected disclosure and that they suffered a detriment, on the balance of probabilities. If established the respondent then has the burden of proving the reason for the detrimental treatment (section 48(2)). Where an employer does not prove a satisfactory reason for the detriment, the tribunal may infer that it was on the ground that the employee made a protected disclosure (***Ibekwe v Sussex Partnership NHS Foundation Trust UKEAT/0072/14*).**

119. A "detriment" is not defined in the ERA. Tribunals are aided by discrimination cases which have explored the meaning extensively. One of the leading such cases is ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285,*** where it was held that a worker suffers a detriment if a reasonable worker would (or might) take the view that they have been disadvantaged in the circumstances in which they had to work. However, an "*unjustified sense of grievance*" is not enough.

120. It is also important to record that the detriment must in turn be "*on the ground*" of the disclosure. There must be a connection between the disclosure and the detriment. The employer's decision-making process must be considered. In ***NHS Manchester v Fecitt and others [2012] IRLR 64***, the Court of Appeal held that the test in detriment cases is whether "*the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower*". If a detriment is not sufficiently connected to the disclosure, the victimisation complaint will fail.

**Victimisation**

121. Victimisation occurs under section 27 EqA where an employer subjects an employee to a detriment because the worker has done a 'protected act', or, because the employer believes that the worker has done, or may do, a protected act in the future.

    (a) *The Act provides (1)A person (A) victimises another person (B) if A subjects B to a detriment because—*

    (b) *(a)B does a protected act, or*

    (c) *(b)A believes that B has done, or may do, a protected act.*

    (d) *(2)Each of the following is a protected act—*

    (e) *(a)bringing proceedings under this Act;*

    (f) *(b)giving evidence or information in connection with proceedings under this Act;*

    (g) *(c)doing any other thing for the purposes of or in connection with this Act;*

    (h) *(d)making an allegation (whether or not express) that A or another person has contravened this Act.*

122. The EqA does not require a comparator for a victimisation complaint. The claimant only needs to show that they have been subjected to a detriment '*because'* they have done a protected act. However, to succeed a claimant must show a link or connection between the detriment suffered and the protected act complained of.

123. I have discussed the definition of '*detriment'* above.

124. Ultimately, to establish victimisation, I am required to consider whether the claimant performed a "protected act" and whether the claimant was the subject of a detriment or dismissal having undertaken that act.

125. I have directed myself to ***Scott v London Borough of Hillingdon 2001-EWCA Civ 2022*** where the Court of Appeal found where an alleged discriminator did not know of a protected act, their treatment cannot logically have been "because of" that act:

    (a) "*It is quite clear that, in a case of this kind, knowledge on the part of the alleged discriminator of the protected act is a pre-condition to a finding of victimisation. That is inherent in the statutory wording and it was spelt out by Lord Steyn in Nagarajan v London Regional Transport [2000] 1AC 501 at 519H".*

126. In considering whether an act is protected – the Employment Tribunal should consider wider context of the act in question (***Kokomane v Boots Management Services Ltd [2025] EAT 38),***

**Direct Discrimination (Race and Sex)**

127. Direct Discrimination occurs under section 13 of EqA where "*because of*" a protected characteristic the claimant is treated less favourably than the respondent would treat others.

128. S123 EqA provides that a complaint of direct discrimination must be raised within 3 months of the act in question (or whether there is a series of acts, the last). A tribunal may extend that time where it considers it to be "just and equitable".

129. The relevant protected characteristics in this case are: (i) race; and; (ii) sex. The claimant relies upon both.

130. A comparator is required to establish a direct discrimination complaint. A comparator can be real or hypothetical. A claimant is required to show less favourable treatment in comparison with their comparator(s) in largely similar circumstances because of the relevant protected characteristic (here race/sex)

131. It is for a claimant to prove facts from which the Tribunal can infer that discrimination occurred. The burden of proof in a direct discrimination claim is set out in the EqA sections 136(2) and (3) which provide:

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

    (b) *But subsection (2) does not apply if A shows that A did not contravene the provision."*

132. It is recognised that whilst the claimant carries the initial burden of proof, the facts which might assist the claimant are likely to be at the respondent's disposal. A respondent is unlikely to admit discrimination (even unconsciously) and it can therefore be difficult for the claimant to prove discrimination. For that reason, the concept of 'shifting' the burden of proof exists.

133. The shifting burden of proof involves two stages: First the claimant must prove on the balance of probabilities facts which might lead to an inference of discrimination (in the absence of any other explanation). This is referred to as establishing a *"prima facie"* case. A Tribunal should consider all the evidence, not just that presented by the claimant (***Royal Mail Group Ltd v Efobi [2021] UKSC 33).*** If *a prima facie* case is established the

respondent must then prove, on the balance of probabilities, that the treatment was in no sense connected to the protected characteristic. This demonstrates the “burden” shifting.

134. In considering such a case the Tribunal should consider the revised ‘Barton Guidance’ as set out in ***Igen v Wong 2005 EWCA Civ 142.*** That guidance typically requires hearing from a respondent to discharge the burden – given they have the relevant information and materials.

135. However, it is not sufficient simply for a claimant to demonstrate that (i) there has been less favourable treatment; and (ii) there is a difference in the relevant protected characteristic. A Tribunal must find that there is “*something more*”, albeit that is not a high hurdle: ***Madarassy v Nomura International PLC [2007] EWCA Civ 33.***

**Unfair Dismissal (constructive)**

136. The right not to be unfairly dismissed is reflected in the ERA at section 94.

137. Section 95 ERA provides that a ‘dismissal’ can occur where:

(a) “*the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct*”.

138. It is an implied term in the employment contract (often referred to as the ‘implied duty of mutual trust and confidence’) that:

(a) "*The employer must not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of trust and confidence between employer and employee*" ***Malik and another v Bank of Credit & Commerce International SA (in compulsory liquidation) [1998] AC 20***

139. In order to establish a constructive dismissal the employee must prove that: (1) there was a fundamental (also known as ‘repudiatory’) breach of contract; (2) the employee accepts the breach and resigns in response; and (3) the employee must not delay too long thereby accepting the breach and affirming the contract.

140. ***Western Excavating (ECC) Ltd v Sharp [1978] QB 761*** is a helpful and commonly cited authority on constructive dismissal which provides

(a) "*If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so,*

*then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.*"

141. A breach of the implied duty of mutual trust and confidence will normally be material and give rise to a constructive dismissal **(*Morrow v Safeway Stores PLC [2002] IRLR 9).***

142. In ***Lewis v Motorworld Garages Ltd 1986 ICR 157*** the Court of Appeal held that a course of conduct can cumulatively amount to a repudiatory breach of contract entitling an employee to resign and claim constructive dismissal where there is a 'last straw' incident even if that incident by itself did not amount to a breach of contract. The last straw does not need to be of the same character as the earlier acts, provided it goes towards a breach of trust and confidence. It also need not be "*blameworthy*" or "*unreasonable*" on its own **(*Omilaju v Waltham Forest London Borough Council 2005 ICR 481)***.

143. In ***Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978*** the Court of Appeal set out five tests for an employment tribunal to consider when considering whether an employee was constructively dismissed:

(a) *(1) what was the most recent act or omission by the employer that the employee maintains is the cause or trigger for their resignation;*

(b) *(2) whether the employee has affirmed the contract of employment since that act or omission;*

(c) *(3) if not, whether that act or omission was by itself a repudiatory breach of contract;*

(d) *(4) if not, whether it was nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of the implied term of trust and confidence, and, if it was, no separate consideration of a possible previous affirmation is required; and*

(e) *(5) whether the employee resigned wholly, or partly, in response to that breach (post, para 55).*

144. A repudiatory breach can be occasioned by a one-off serious event or can be a series of smaller events which compound to the point that there is a "last straw" and the claimant resigns.

145. The Tribunal will have to consider the circumstances surrounding the claimant's termination of employment and in particular the "*last straw*" that caused the claimant to resign.

**Breach of Contract**

146. The Employment Tribunal has limited jurisdiction to hear breach of contract claims under the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994. A tribunal can consider a claim that "*arises or is outstanding on the termination of the employee's employment*."

147. The burden of proving that there was a breach of an employment contract sits with a claimant, on the balance of probabilities.

**Witnesses**

148. This was a case where witness statements had been produced and shared in advance. That was helpful.

149. The claimant gave evidence first. She recalled the events in question and appeared to give the Tribunal an honest account of the circumstances around her team move and later decision to resign. In that regard the claimant was credible and reliable. However, the claimant had a particular view of the circumstances around her termination and the events leading to that, she was steadfast in that regard. When it was suggested to her that she was mistaken or her position was incorrect, the claimant was unwilling to make concessions. Beyond the 'customer incident' and issues with time off to attend medical appointments, the claimant was consistently imprecise and unspecific about the facts of her alleged acts of discriminatory treatment.

150. The claimant's case was predicated on inferences she invited the Tribunal to draw, particularly about what she believed was discussed between Mr Holmes and Mr Grothouse. These were indeed assumptions, she had no evidential basis for those beyond supposition. The claimant's assumptions were not supported by the evidence and as such I could not reasonably draw the inferences that I was invited to draw.

151. Where there was a conflict in evidence, I preferred the respondent's witnesses who appeared more objective, consistent and reliable.

152. The claimant called Ms Morgan as a witness. Ms Morgan was not on the list of Witnesses and had not prepared a witness statement. The claimant, however, asserted that she had relevant evidence. The respondent objected. I noted that objection and lack of notice. However, having regard to the overriding objective, I allowed Ms Morgan to give evidence, subject to it being relevant to the issues.

153. It was established at the outset that Ms Morgan had been dismissed by the respondent for gross misconduct for call avoidance. Whilst she suggested that she did not have an 'axe to grind' or bear a grudge against the respondent, her evidence was clearly given from a place of some hostility towards the respondent and favour towards her friend, the claimant. I treated her limited relevant evidence with some caution on that basis. Her relevant evidence was limited to the question as to whether

Mr Holmes had said words to the effect of '*if you don't like the job you can quit*'. To that end she corroborated the claimant's assertion that Mr Holmes had said that or words similar.

154. For the respondent, Mr Holmes gave evidence first in person. He was credible and reliable. He remembered the events well, appeared helpful and spoke of a positive relationship with the claimant until the initiation of the 'Back to Your Best' plan. He was genuinely surprised and upset by the turn of events and the claimant's accusations towards him, which he strongly refuted. Mr Holmes presented as a supportive and caring manager. He did his best to accommodate the claimant's absences both paid and unpaid (as anticipated by the policy). He was accommodating. He complied with the respondent's policies, demonstrated flexibility and acted reasonably in all the circumstances.

155. Ms Wilson (Mr Holmes' line manager) also gave evidence in person. She was credible, reliable and appeared to have a genuine desire to resolve matters between the claimant and Mr Holmes, before the claimant's transfer to Mr Grothouse. She tried to avoid further escalation. Once she realised the relationship had broken down (certainly in the claimant's eyes) she acceded to the claimant's request to change manager. However, she fell short of agreeing that the claimant's allegations were well founded.

156. Mr Venters (Senior Team Manager, Mr Grothouse's Line Manager) gave evidence by video. Mr Venters was credible and reliable. He remembered the events well, including being approached by Mr Grothouse about the claimant's telephony behaviours. He remembered the circumstances around Mr Grothouse initiating the trace report, the subsequent investigation and disciplinary process. He remembered these related to concerns about the claimant's use of the AUX status and her adherence.

157. Ms Martin-Chicharro (Investigator) gave evidence by video. She was reliable and credible. She did not know the claimant until she was assigned the matter to investigate. She had no knowledge of the issues giving rise to the team move or any of the history. She was genuinely independent and had a good recollection of the events and her decision making process.

158. Ms Quin gave evidence by video. She never met the claimant and relevant communications were in writing, so these were available to the Tribunal along with transcripts and/or AI summaries of her investigatory meetings. She was credible and reliable.

**Mr Grothouse**

159. The respondent did not call Mr Grothouse to give evidence, as was their prerogative. There was no witness statement for him. He had been interviewed by Ms Quin in the grievance process. Mr Grothouse had been

a seconded team manager temporarily. He had since returned to his substantive role.

160. I explored the relevance of his evidence at the outset of proceedings. The respondent advised me that they were not calling him as he was not available. They considered that his evidence was limited to initiating the trace report and the various other witnesses could speak to the matters arising. He was not ultimately the investigating officer, having passed the case to Ms Martin-Chicharro.

161. During Mr Venters' evidence, it transpired, that whilst Mr Grothouse remains in the respondent's employment, he was currently absent on long-term sick leave. The Tribunal had no further detail beyond that. The respondent remained satisfied that it could address matters relevant to Mr Grothouse through the other witnesses and the contemporaneous documentary evidence.

162. Whilst Mr Grothouse initiated the trace report this was on the basis of concerns raised by another manager (Ms Anthony). Mr Grothouse was not responsible for undertaking the disciplinary investigation or finding that the claimant had a disciplinary case to answer, that was Ms Martin-Chicharro's and then Ms Davies'.

163. Mr Grothouse's role was limited to initiation of the trace reports and reviewing their findings before escalating the matter.

164. Whilst his evidence in respect of what was discussed between him and Mr Holmes at handover was relevant, Mr Holmes was able to speak first-hand to that discussion and be cross examined. Ms Quin was also available who had interviewed Mr Grothouse during the grievance. Mr Grothouse's manager, Mr Venters, who supported Mr Grothouse's initiating the trace report was also being called to speak to his discussions with Mr Grothouse about initiating the trace report.

165. The claimant wanted to cross examine Mr Grothouse and put her case to him. I was mindful of the fact that parties had exchanged witness statements in this case in advance (per the Case Management Orders) and as such it would have been apparent to the claimant that Mr Grothouse was not being called, given the lack of a witness statement from him.

166. It would, of course, have been open for the claimant, in advance of the hearing, to have called Mr Grothouse herself voluntarily or in the alternative sought a witness attendance order if she considered his evidence important. She did not.

167. I considered whether Mr Grothouse's evidence was so important that the Tribunal should be adjourned and a witness attendance order issued. I had regard to the respondent's position that the matters in question

concerning Mr Grothouse could properly be addressed by its other witnesses. It was the respondent's decision as to what witnesses to call. As noted above, his role and so evidence, was limited to instructing the trace report. Nothing else turns on his evidence.

168. I am also mindful that if the claimant had called Mr Grothouse herself, she would not have had the benefit of 'cross examination' of him – which is what she appeared to want to do.

169. I had no evidence of Mr Grothouse's illness or fitness to give evidence.

170. Having regard to the overriding objective and the need to avoid unnecessary delay or expense in proceedings, I decided not to delay proceedings or issue an order. That would likely have resulted in the postponement of the proceedings and the case requiring re-listing. That was undesirable. I had already allowed the claimant to produce an unexpected witness and timetabled to accommodate that. The parties were all present and ready to proceed. I was mindful that it is open to the respondent, who does not carry the initial evidential burden in this case, to decide which witnesses to call (and not). I concluded that if the claimant had considered Mr Grothouse's evidence to be so material I would have expected her to have sought an order herself, well in advance of the first day.

171. However, I explained to the parties that they may wish to address the Tribunal when making submissions on the non-attendance of Mr Grothouse and whether the respondent not calling him might give rise to an inference. I maintained an open mind in that regard and was prepared to hear submissions on that point.

172. When it came to submissions on the matter the claimant's position was that not having evidence from him, I should draw an adverse inference. The claimant cautioned against a reliance on *'second-hand evidence'* which I took to mean Mr Venters's conversations with Mr Grothouse about initiating trace reports and Ms Quin's discussions with Mr Grothouse when investigating the grievance. The claimant submitted "*The Tribunal should therefore exercise caution when accepting retrospective managerial interpretations where contemporaneous documentary evidence points elsewhere*". The respondent on the other hand submitted that Mr Grothouse was on long-term sick leave and there was no prejudice to her, given the other witnesses could speak to matters.

173. I did not draw an adverse inference in the circumstances. As I have said, I found the respondent's witnesses credible and reliable. Hearsay evidence about discussions they had with Mr Grothouse is admissible, with an appropriate degree of caution. I did not get the impression that Mr Grothouse had not been called as his evidence would be contradictory or unhelpful. The contemporaneous documents spoke for themselves. it

was more likely on account of him being off on long-term sick leave. I remained neutral on the question of any such inference.

**Discussion and Deliberations**

174. Following the preliminary hearing on 17 February 2026 a list of issues had been prepared with the assistance of Employment Judge Hoey (p65 and appendix 1). I had regard to those issues, which had been expanded on by the respondent in an attempt to elicit further specification from the claimant, albeit the revised issues dated 27 July 2026 had not been agreed (p150 – 156).

175. The Parties had also been ordered to produce a list of agreed and disputed facts by 12 May 2026. That had not been achieved.

**Protected Disclosures**

176. The claimant has been consistently and unambiguously clear (p107) throughout that the protected disclosures relied upon are contained in "*my 6 March 2025 email sent at 15:36 referring to concerns raised about unfair treatment inappropriate remarks and misuse of process*". That was the basis of her protected disclosure in her pleadings, further particulars and during the hearing.

177. I had regard to the specific wording of section 43B(1) ERA requiring that "*information*" be disclosed and the aforementioned authorities ***Kilraine*** and ***Cavendish Munro***.

178. I have to consider whether or not the email of 6 March 2025 (recited above) constituted a qualifying disclosure of information, as defined by s43B.

179. Having regard to the precise content of the email, I was not satisfied that the specification contained in that email was sufficiently detailed to constitute the disclosure of "*information*" for the purposes of s43B or to meet the tests set out in the aforementioned authorities.

180. The email, in my judgment, falls far short of the disclosure of "*information*" that has sufficient factual content and specification such that it may tend to show that one of the prescribed factors in s43B has occurred. The assertions made are clearly an expression of dissatisfaction and unhappiness but, in my view, they fall far short of the disclosure of "*information*" that tend to show one of the prescribed contraventions had occurred, for the purpose of s43B ERA. The claimant alludes to an "*uncomfortable working environment under {Mr Holmes'} management which has been affecting my mental health*" and that the claimant having "*encountered instances of unfair treatment, lack of support and inappropriate remarks*". But gives no further specification whatsoever.

181. I find the claimant falls at the first hurdle in that regard. There was no disclosure of 'information' in that email. There was no qualifying protected disclosure.

182. Having made that determination, in respect of the protected disclosure claim, I am not required to consider all of the other four factors of the test in ***Williams*** per ***Ibekwe*** (both cited above). I have, however, considered the other component parts of the test that I am capable of taking a view on, having heard the evidence.

183. I considered whether the claimant's email was intended to be a disclosure made in the "*public interest*". I do not find it was. The claimant's concerns were clearly matters that the claimant was herself unhappy about, such that she wished to be assigned a different manager. The claimant had a desired objective - to move teams, following conclusion of the 'Back to Your Best' performance plan. I find the interests the claimant was looking to serve were entirely her own. I agreed with the respondent's submission that the matters raised were 'self-serving'. I am not satisfied that the 'public interest' hurdle was met nor am I satisfied that the claimant had a reasonable belief that she was raising the issues in the public interest. Both further hurdles fail in that regard.

184. I am persuaded that a breach of the EqA (or indeed an employment contract) could indeed comfortably constitute at least some of the matters listed section 43B(1)(a)-(f) and the claimant could, on the face of it, form the reasonable belief that it did so.

185. Having found that the claimant did not make a qualifying disclosure, it is not necessary for me to make findings in respect of whether the claimant was the subject of a detriment as a consequence. That said, as I turn to consider the next head of claim (victimisation), I am required to apply my mind to the alleged detriments in question. Had I been required to consider those alleged detriments here, I would have made identical findings.

**Victimisation**

186. The factual matrix giving rise to the Victimisation complaint largely mirrors the protected disclosure considered above but is expanded to include the meeting on 25 March 2025 and its surrounding events. The claimant asserts that her email of 6 March 2025 (and her subsequent discussions with Mr Holmes and Ms Wilson) also constituted a "protected act" under the EqA. The Tribunal understands the claimant relies upon s27 EqA:

    (a) *"(c) doing any other thing for the purposes of or in connection with this Act…" and/or*

    (b) *(d)making an allegation (whether or not express) that A or another person has contravened this Act.*

187. I considered whether the email of 6 March 2025 (p308) and follow-up mediation might properly constitute a "*protected act*" for the purposes of the EqA. I am satisfied that applying ***Kokomane v Boots Management Services Ltd [2025] EAT 38*** the email taken with surrounding circumstances and context (particularly the mediation meeting that followed on 25 March 2025 (p262 – 279) are capable of constituting a "*protected act*" for the purposes of the EqA. Discrimination allegations are clearly raised at that meeting albeit they require greater specification.

188. It is clear that at the meeting the racist customer incident was raised and the claimant expressed her unhappiness at how it was handled. The claimant's leave to attend medical appointments were also discussed. I find that these were matters that engaged section 27(2)(c) and/or (d) and as such are capable of constituting protected acts. I find that the claimant did undertake a "protected act" by raising these matters on 25 March 2025.

189. Having decided that, I must go on to consider whether the claimant has suffered a detriment and if so, was that detriment because the claimant did a protected act(s).

190. I am asked to consider the following proposed detriments:

    (a) (1) placing the claimant on "trace monitoring";

    (b) (2) bringing disciplinary proceedings against her; and

    (c) (3) Mr Holmes micromanaging the claimant by not supporting her, making statements like ""*if you don't like the job you can quit*" and requiring the claimant to use breaks or time off for specialist medical appointments.

191. In respect of each of the above I am required to consider whether those acts amounted to a 'detriment'.

**Detriment (1) Trace Monitoring / Reporting**

192. The evidence from Mr Holmes and Mr Venters was requesting a trace report was a routine management response to a situation where there was unusual activity by an agent requiring more data in respect of an agent's call activity. I have set out above my findings on the nature and use of trace reports. An employee does not know the report is being run. Mr Venters considered the exercise to be "*laborious*" for the team manager. It was, however, part of a manager's role in diligently supervising their teams.

193. Monitoring is clearly provided for in the claimant's employment contract (p165). Running a trace report was a normal operational response to 'adherence' concerns. I do not believe requesting trace reports of itself was a "detriment" or that it would be reasonable for the claimant to regard

it as such. Such a report may identify no issues at all, a technical problem or (as happened in this case) a conduct concern. A manager reviewing a contact centre agent's call data where concerns had been raised by another manager could not, in my judgment, properly be considered a 'detriment' at that early stage. I find it was a reasonable routine management undertaking in the circumstances.

194. Initiating a trace report was not, in my judgment, a detriment.

195. If I am wrong on that, I would not have found that Mr Grothouse initiated the trace reports *because* the claimant did a protected act/(s). Moreover he did so in consequence of being prompted to look at the claimant's telephony behaviours by a different manager, given there were concerns.

196. The claimant has not proven sufficient facts that would allow me to draw an adverse inference such as to shift the burden of proof (discussed above).

**Detriment (2) The Disciplinary Investigation**

197. I accept that, on the face of it, initiating the disciplinary process against an employee may constitute a detriment and be reasonably viewed as such. I find that the initiation of the disciplinary process (and its attending concern or worry) did indeed constitute a "detriment" on the face of it and it was reasonable for the claimant to have regarded it as such.

198. Having made that finding, I will need to go on to consider the respondent's reasons behind the detriment, and particularly whether the detriment was because of the "protected act(s)".

**Detriment (3) Micromanagement**

199. Mr Holmes is accused of micromanagement which she says are evidenced by not supporting her, making statements to the claimant such as "*if you don't like the job you can quit*" and telling her to use her breaks for medical appointments.

200. I accept that micro-management would be an unpleasant experience and could on the face of it constitute a detriment and if that detriment was because the claimant had done a protected act then it may reasonably be considered a detriment.

201. However, I am not satisfied that Mr Holmes engaged in micromanagement. There is insufficient evidence to allow such a finding.

202. On the contrary, Mr Holmes was a supportive manager. He asked legitimate questions in respect of the claimant's need for time off and did his best to accommodate those requests, all in accordance with the

respondent's policy and guidance. That could not be said to be micromanagement on any interpretation.

203. Whilst I find that Mr Holmes on one occasion did at a team meeting say "*if you don't like the job you can quit*" I do not consider that to be an act of micromanagement or a threat to the claimant's job security. The statement was made to the whole team during a team meeting.

204. Further, I do not consider that comment to have been motivated or connected to a protected act. Indeed, I find that it is more likely than not to have taken place **before** the protected act(s) in question, so could not properly be said to be because, or, connected to it.

205. The claimant has not proven sufficient facts that would allow me to draw an adverse inference such as to shift the burden of proof (discussed above).

**Reason for Detriment – Disciplinary Process.**

206. Looking at the disciplinary process as a detriment, I must consider the reasons advanced by the respondent to understand "why" the respondent acted as it did in initiating the process. I must consider whether there is a connection between the protected act(s) and the detriment in question.

207. I remind myself that the burden of proof is on the claimant to prove facts from which the Tribunal "*could decide, in the absence of any other explanation, that {the respondent} contravened the provision concerned*" (s136(1)EqA).

208. Both Mr Venters' and Ms Quin's evidence was the concerns giving rise to the trace report were raised by Ms Anthony. That is consistent with the 6 April 2025 Teams exchange between Ms Anthony and the claimant. Whilst Mr Grothouse initiated the Trace Report process as the line manager, I found on the balance of probabilities this had been prompted by Ms Anthony's concerns. That is consistent with this exchange and the timing of the trace report. The respondent's witnesses were consistent: there were concerns related to the claimant's 'adherence' and her use of the AUX status that required further exploration.

209. It was clear to me that neither Mr Grothouse (and much less Ms Anthony) were aware of the issues raised between Mr Holmes and the claimant. Accordingly, Mr Grothouse's (nor Ms Anthony's) motivations for engaging HR to instigate the disciplinary investigation could be said to be connected to, or influenced by such matters. There was no connection between the two. The disciplinary process was not engaged because of the claimant's protected act(s).

210. The sequence of events from Ms Anthony's initial concern to the formal disciplinary investigation is set out in my findings above. The investigation

was handled by an independent person (Ms Martin-Chicharro) who was also unaware of any protected acts by the claimant (on 6 March or 25 March).

211. I am satisfied that no one involved in the trace report or disciplinary was aware of the protected act(s). Accordingly, it cannot be said to have been "*because*" of the protected act.

212. Mr Venters was supportive of Mr Grothouse's initiation of the trace report and subsequent initiation of the disciplinary process given the concerns that existed. His evidence was "*I strongly believe that Jordan investigated {the claimant's} telephony behaviours for the right reasons as by looking at the trace reports, it is clear there was evidence of concerning telephony behaviours*" there was "*clear evidence of concerning telephony behaviour*".

213. Ms Martin-Chicharro handled the disciplinary investigation. She was clear and consistent that she had "*no knowledge*" (w36, 4) of the complaints made by the claimant in March 2025 and so said they had "*no bearing on my finding*" that there was a case to answer as she progressed the investigation. She also explained that she had "*no reason to think that Mr Grothouse had initiated the disciplinary process for any other reason other than he suspected that she was avoiding calls"* and there was, by that time, evidence to support that suspicion. I accepted her account. Put simply she did not know of those concerns and so they could not have influenced her to find that there was a disciplinary case to answer.

214. On balance, I am satisfied that the initiation of the disciplinary investigation and process was because of the serious and sustained concerns about the claimant's telephony behaviour (and evidence thereof) that emerged from the two periods of monitoring described above rather than because the claimant did a protected act (or it was believed that she might do so).

215. I am not satisfied the claimant has proven facts that would lead me to conclude, "*in the absence of any other explanation*", that the respondent exposed the claimant to a detriment because she had undertaken a protected act. The respondent had an entirely satisfactory explanation for the initiation of the disciplinary process unconnected with the protected act: apparent evidence of misconduct.

216. I was invited to make a finding that the claimant had acted in bad faith so as to negate a victimisation complaint. I do not make such a finding.

217. However, for the reasons advanced above, the victimisation claim is without merit and fails.

**Direct Discrimination**

218. I now turn to consider the allegations of direct discrimination (sex and race). The claimant relies on a number of incidents which she argues amount to direct discrimination.

**Direct Discrimination (Race) – Time bar / Jurisdiction.**

219. A claim of direct discrimination must be presented within 3 months of the act in question, or where there is a series of acts, the last in that series. If not, it is time barred unless it is "*just and equitable*" to extend time (s123 EqA).

220. The allegations of less favourable treatment because of race are as set out in the List of Issues and further particulars provided by the claimant on 10 March 2026. The issues **all** relate to interactions with Mr Holmes **before** she moved teams on 31 March 2025. Summarised the issues in question related to:

(a) Mr Holmes' threatening the claimant's job by saying "*if you don't like the job you can quit*" or words to that effect and requiring her to use breaks for medical appointments. The claimant's further particulars (p106) suggest this happened in "*Early 2025*". No specific date beyond that is given. I use 30 March 2025 as the relevant date – in the absence of another, that being the day before the claimant moved teams.

(b) The racist customer incident (and Mr Holmes' response) – which I found to have taken place on 17 September 2024 (page 657).

(c) A lack of support for medical treatment in "Early 2025" (p107), again no specific date is given. The last interaction about such medical treatment with Mr Holmes (based on the evidence I was taken to) was on the claimant's return date on 19 March 2025. I find that date as the last related event.

(d) A lack of IT support by Mr Holmes "*on several occasions across late 2024 and early 2025*" (p106). Again, this must be before 31 March 2025.

221. Given the claimant's transfer on 31 March 2025 and the facts established above, on the face of it, all of the direct race discrimination complaints should have been presented to the Tribunal on or before 30 June 2025 (3 months after 31 March 2025). The Claim, however, was not presented until 5 November 2025. On the face of it these complaints were not raised in time. The question of jurisdiction therefore properly arises and whether it is "*just and equitable*" to extend time.

222. The claimant's case throughout was that the facts were all interconnected constituting a "*continuing course of conduct*" and she submitted that her "*case was not that any one incident alone establishes liability*".

223. The claimant did not address the prospect that the events under Mr Holmes may be considered as distinct and separate from those under Mr Grothouse.

224. The claimant's witness statement is silent on the reasons for non-presentation of the direct discrimination complaints whilst under Mr Holmes' management (or in the 3 months thereafter). Her pleadings address them being all connected as did her evidence and submissions.

225. In cross examination the claimant explained that she had not raised an internal grievance as her trade union had advised her not to. Instead, she was encouraged to raise her concerns with senior management, which she did by her 6 March 2025 email. She did not provide a reason for not presenting the complaint in time beyond that.

226. The claimant was on notice that time bar was an issue and she acknowledged it (p52).

227. I find the events under Mr Holmes (before 31 March 2025) were indeed distinct and unconnected events from those under Mr Grothouse (on or after 31 March 2025).

228. The claimant reminded me that she was a litigant in person. I had regard to that fact and the challenges faced. The claimant's evidence was that she had support from her trade union, from whom she had taken advice about her workplace concerns. Being a party litigant is not, of itself, an excuse for not informing oneself of the time limits that apply. The claimant did not raise a grievance about the relevant matters.

229. After her team move on 31 March 2025, there was no evidence of any ongoing race issues or complaints until the claimant was asked to account for her call related conduct.

230. Whilst complaints about events before 31 March 2025 are not presented within the 3 month time limit and little (if any explanation was offered), I must consider whether is it nonetheless "*just and equitable*" to extend time. That is a matter of discretion.

231. I have reminded myself of ***Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640***, where the Court of Appeal held that:

    (a) "*There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.*"

232. At the point I am considering the question of extending time, I have already heard all of the evidence. The contemporaneous evidence was indeed available and had been produced. Mr Holmes and Ms Wilson were present in person as witnesses and had been able to confidently and credibly recall and discuss their evidence. There were also no additional costs to speak of. None of these factors materially prejudiced the respondent.

233. The primary prejudice to the respondent is likely to be it may lose the 'shield' it enjoys with a case being time barred and thereby avoiding any adverse findings and/or consequential remedy.

234. In the other hand, I have reminded myself that if an extension is refused a claimant may suffer prejudice in that she may be denied justice and the associated remedy.

235. I had regard to the recent case of ***Logo v Payone GmbH [2025] EAT 95,*** that helps clarify the approach to whether there is '*forensic prejudice'* where a Tribunal has already heard the evidence and determined the underlying facts, before it turns its mind to the question of time bar. In that case the Tribunal fell into error by, having heard the evidence of and concluding that it could properly determine the complaint, but deciding not to do so on the basis of prejudice to the respondent caused by the delay.

236. There is limited prejudice to the respondent if time is extended, whereas there is much greater prejudice to the claimant if I do not. I am also required to have regard to the merits of the claim.

237. Having balanced the question of prejudice, I exercise discretion to allow the events that took place under Mr Holmes (before 31 March 2025) to proceed to consideration of their substantive merits. I therefore exercise my discretion to extend time, it being "just and equitable" to do so under s 123(1)(b) EqA. The Tribunal has jurisdiction to hear those complaints.

238. Accordingly the direct race discrimination complaints will proceed to consideration of the merits.

**Substantive Findings: Direct Race Discrimination**

239. The claimant, during case management, named two comparators "Michelle" and "Rikki" who similarly sought time off. Otherwise, the claimant's evidence in respect of their relevance was difficult to follow. They were not witnesses. I consider that the appropriate comparator in this case is a hypothetical one that does not share the claimant's race (Nigerian) but otherwise shares the same circumstances.

240. I turn now to address the alleged acts of less favourable treatment.

*The claimant's job was threatened in that there was increased micromanagement by Mr Holmes and that he did not support the claimant, making statements such as "if you don't like the job you can quit" and him telling her that she had to use her breaks for medical appointments.*

**Direct Race Discrimination: Job Threats / Micromanagement**

241. The claimant and Ms Morgan both gave evidence that Mr Holmes had said words to the effect of "*if you don't like your job you can quit*". This had been said at a team meeting where both had been present with other team members. Mr Holmes denied saying this. I found, on balance, that Mr Holmes likely used that term as alleged during team meeting, at some point in early 2025. However, I find it was not specifically levelled at the claimant and there is absolutely no suggestion or inference that it was said because of the claimant's race, nor would it be reasonable for the claimant to have regarded it as such.

242. There is no further context available. I do not consider this to be evidence of threatening the claimant's job or treating the claimant less favourable than others because of race. There is no evidence that would lead me to conclude that this incident on any interpretation constitutes an act of less favourable treatment, compared to a comparator, because of race.

243. Otherwise, I have made a finding that the claimant was not micro-managed. I observe that on one hand the claimant suggested that Mr Holmes was slow in responding to her and on the other she alleges she was micromanaged. It is difficult to accept that it was both.

244. I will deal with the micro-management / medical appointments matter separately below.

**Direct Race Discrimination: Customer Incident**

*In or around August 2024, in response to the racist customer incident, Mr Holmes was unsupportive and responded with a laughing emoji.*

245. Turning now to the racist customer incident which took place on 17 September 2024. The claimant was unhappy with Mr Holmes' response to it.

246. Much was made by the claimant during the mediation, her grievance and before the Tribunal of Mr Holmes using a "laughing" emoji in response to her raising the incident. However, it became entirely clear to me that the claimant was mistaken in that regard. The exchange is contained at p657 (2:28pm) and it is clear that Mr Holmes responds to the claimant's initial message (2:29pm) with a **"+*cry*"** emoji with directions to escalate the matter to the Manager Chat. Emojis were commonly used between the claimant and Mr Holmes.

247. In respect of the rest of the response to the matter, this was an isolated incident that appeared to be addressed locally to a conclusion on the day in question. As I have found above, the claimant did not progress the matter by raising an incident report nor grievance. When Mr Holmes enquired about the claimant's welfare immediately afterwards she ultimately thanked him and ended the conversation with "*Thank you Jon, I am alright*". The matter was not raised again until the 25 March 2025 meeting.

248. This was an unfortunate and regrettable incident at the hands of the customer in question and it is disappointing that the claimant experienced it. The respondent has a clear policy and processes for dealing with such instances. The claimant took no further action after thanking Mr Holmes and confirming that she was "*alright*".

249. However, I had no evidence that the claimant was treated (or would have been treated) differently compared to a hypothetical comparator who was not Nigerian in similar circumstances. I am not satisfied that Mr Holmes' response constituted less favourable treatment because of the claimant's race.

**Direct Race Discrimination: Appointments**

*The claimant was not given sufficient support to attend specialist medical appointments*

250. The claimant was provided with a mixture of paid and unpaid time off to attend specialist medical and dental appointments. I found Mr Holmes was particularly flexible in that regard, per the respondent's policy.

251. I do not recite each and every absence and accommodation made by Mr Holmes. It is sufficient to say that the Teams exchanges between pages 513 and 652 of the bundle contain a number of examples of mutual flexibility and accommodations, all consistent with the respondent's policy and what would be expected of good management. I did not find Mr Holmes to be anything other than reasonable and flexible in the circumstances.

252. Insofar as time off and attendance at appointments goes, there was no evidence before me that claimant has been treated less favourably than a hypothetical comparator who was not Nigerian, in similar circumstances.

**Direct Race Discrimination: Lack of Support for IT issues**

*Lack of support in respect of IT issues.*

253. I preferred the evidence of Mr Holmes in this regard. He did not recall that the claimant had been "*speaking to me about any IT issues more than any of the other colleagues I managed, However, generally it is not my job to*

*fix a colleague's IT issues… I would normally expect to direct her to IT… wherever I can, I do try to assist with the issue in the first instance*".

254. I find that Mr Holmes sought to be helpful, but ultimately his evidence was that it is the respondent's IT department's role to provide IT support and resolution to problems, not Mr Holmes'.

255. I reject the claimant's assertion that Mr Holmes was required to, or did not provide, IT support and the allegation that the claimant was treated less favourably than a hypothetical comparator who was not Nigerian, in similar circumstances.

256. Based on my findings, I dismiss the direct race discrimination complaints as without merit.

**Direct Sex Discrimination**

257. The allegations of less favourable treatment because of sex are as set out in the List of Issues (and further particulars provided by the claimant on 10 March 2026). As with the direct race discrimination complaints, the issues relate to interactions between the claimant and Mr Holmes **before** she moved to Mr Grothouse's team.

258. I remind myself that the claimant moved teams on 31 March 2025.

**Direct Sex Discrimination: Time bar / Jurisdiction**

259. For the reasons detailed above (which I adopt) I find it is just and equitable to extend time and proceed to consider the substantive sex discrimination claims.

**Substantive Findings: Direct Sex Discrimination**

260. For the purposes of this part, I find that the appropriate comparator is a male colleague who requires time off for specialist medical appointments, but whose circumstances are not otherwise materially different from the claimant.

**Direct Sex Discrimination: Support to Attend Specialist Medical Appointments**

*The claimant received insufficient support to attend [specialist] appointments, namely from Mr Holmes over the period December 2024 to March 2025.*

261. I adopt my findings and reasoning as set out above in respect of attendance at appointments. I do not find that the claimant received insufficient support from Mr Holmes in respect of her attendance at

medical appointments or time off. I find that the claimant received sufficient and flexible support, all in accordance with the respondent's policy. The claimant was not treated less favourably than a hypothetical male comparator on the grounds of her sex. This aspect of the complaint is not well founded.

**Direct Sex Discrimination: Use of Breaks and Annual Leave for Appointments**

*The respondent requested that the claimant used breaks and/or annual leave to accommodate her recovery from medical treatment for the same period.*

262. I adopt my findings and reasoning as set out above and elsewhere in this decision. I do not find that the respondent inappropriately asked the claimant to use breaks and/or leave to accommodate her recovery from medical treatment or attendance at appointments. The claimant and respondent worked together to find an appropriate mix of paid and unpaid leave and sought to accommodate each other per the respondent's policy / guidance. I do not find any of the facts proven constituted less favourable treatment when compared to a hypothetical male comparator.

**Direct Sex Discrimination: Medical Procedure and Return from Leave**

*The claimant's return to work was brought forward in March 2025*

263. The claimant was unhappy with Mr Holmes' response to her period of absence between 10 March and 18 March to undergo a specialist fertility related medical procedure on 11 March 2025. I have set out my findings in respect of the relevant period above. Curiously on 7 March 2025 (the day after she sent the 6 March 2025 email, asking for a new manager) the claimant wrote to Mr Holmes saying "*thank you for your support*" (p551). That note of thanks is at odds with the claimant's claims suggesting a lack of support.

264. During the 7 March interaction, Mr Holmes asked if the claimant intended to work on the morning of the procedure (11 March 2025, the procedure being in the afternoon). The claimant replied "*I wont be able to concentrate on Tuesday to be honest.*" Later that same day she in turn asked Mr Holmes for the day before the procedure (10 March) off as she did not "*want to stress*".

265. Mr Holmes' evidence was "*despite the fact my team would be operating one less person than we should have, I made sure to see that {the claimant's} request was accommodated".* I do not see that as anything other than a reasonable act of support by Mr Holmes.

266. The claimant alleges that Mr Holmes had required her return to work earlier than planned.

267. My findings on the 'fit note' and the claimant's return to work on 19 March 2025 are set out above. I have not been taken to any evidence (other than the claimant's assertion) that the return date was premature. The return on 19 March 2025 was consistent with the claimant having been given a 7 day 'fit note' from 11 March. If the claimant considered she was returning earlier than intended she had ample opportunity to raise it and correct Mr Holmes. She did not. Instead, she replied to Mr Holmes' enquiry about a return on 19 March with "… *I just want to recover fast and jump back on calls like before*".

268. I reject the claimant's assertion that she was required to return from leave early. That is not supported by the evidence.

269. Even if the claimant is correct in her assertion, there was no evidence at all before me that the claimant was treated less favourably than anyone else on the grounds of sex.

**Direct Sex Discrimination: Other Specialist Medical Appointments**

270. I have addressed the respondent's treatment of the claimant in respect of appointments elsewhere in this decision. I adopt my findings and reasoning. I find that the respondent was supportive and there are no facts that would lead me to find that the claimant had been discriminated against. The claimant was not treated less favourably *because* of sex in respect of her attendance at specialist medical appointments.

271. In respect of the direct sex discrimination complaint for the reasons above, I find it is not well founded.

**Unfair Dismissal (Constructive)**

272. The claimant resigned on 2 July 2025, in response (she said) to Ms Davies advising her that if she did not attend the rescheduled disciplinary hearing on 7 July 2025, a decision would be made in her absence. The claimant considered that to be the 'last straw' against the context of the other matters considered above.

273. I remind myself that, in respect of discrimination, I did not find that the claimant was discriminated against directly on the grounds of race or sex. I also did not find that the respondent had victimised the claimant.

274. I also did not find that the claimant made a protected disclosure or that she was the subject of a detriment as a result of such a disclosure.

275. I also did not find that the 'Game Changer Vouchers' issue constituted a material breach of contract (per below).

276. In respect of all matters arising under Mr Holmes and the disciplinary process being instigated, I find that the respondent was not in breach of contract (material or otherwise) whatsoever.

277. I have considered the reasonableness of the respondent's conduct under Mr Grothouse in respect of initiating its disciplinary process and the respondent's conduct ***after*** the claimant moved to Mr Grothouse's team up to the point the claimant resigned. I considered whether any of the respondent's conduct in that regard may have constituted a breach of contract.

278. I found that the respondent had legitimate cause for concern in relation to call avoidance. An independent investigating officer was appointed, Ms Martin-Chicharro. An investigatory interview took place and the claimant was afforded the opportunity to respond to the allegations. The investigation resulted in a finding that there was a disciplinary case to answer. A detailed investigation report was prepared. The claimant was in turn suspended.

279. The matter was then assigned to a separate independent hearing manager, Ms Davies. The allegations were clearly set out in the invitation letter. The claimant was given reasonable notice of a disciplinary hearing and provided with the relevant evidence. The claimant was advised of her right to be accompanied. The hearing was rescheduled as set out in my findings above, and the claimant resigned before the rescheduled date.

280. There were, in all, four dates proposed for the disciplinary hearing: 27 June, 30 June, 1 July and 7 July 2025. The respondent's policy (p194 – 198) mirrors the ACAS Code and provides that formal meetings will be held "*without unreasonable delay*".

281. I find that, in all the circumstances as they relate to the disciplinary investigation and process, the respondent acted fairly and reasonably. I did not find the respondent acted in a way that, without reasonable and proper cause, was calculated and likely to destroy the relationship of trust and confidence.

282. I find that the respondent had a legitimate issue to address with the claimant and, having offered four dates, Ms Davies acted reasonably in advising the claimant that she may proceed in her absence. I find the respondent had reasonable and proper cause for its conduct. I do not consider the disciplinary process either on its own, or taken with any other factors, constitutes conduct that would breach or undermine the implied term of mutual trust and confidence.

283. Where dismissal is disputed (as it is here), the burden of proof is on the claimant to show that she was dismissed by the respondent. The claimant has not persuaded the Tribunal that she was dismissed, constructively or otherwise.

284. Overall, on balance, I find that the claimant resigned to avoid the potential consequences associated with the impending disciplinary hearing and allegations of gross misconduct. She was not dismissed by the respondent.

285. Accordingly, the claimant's unfair dismissal complaint is without merit and is dismissed.

**Breach of Contract**

286. I was not directed to a scheme document relating to 'Game Changer' points but Mr Venters addressed this in his evidence, as did Ms Quin. Mr Venters explained that he (with Mr Grothouse) explored the position with HR when the claimant raised the matter on suspension. I am satisfied that this was a non-contractual incentive/reward scheme where the respondent operated discretion not to pay awards where the claimant had resigned. Ms Quin confirmed Mr Venters findings. These were a "low level" and "non contractual" reward scheme. I observe that it would not be uncommon for an incentive or reward scheme not to pay out when an employee is the subject of disciplinary proceedings (suspended) or otherwise resigns without notice.

287. In a breach of contract claim, the burden of proof is on the claimant to prove there was a contractual obligation and that it was breached.

288. There is insufficient evidence before me that would allow me to conclude that the respondent was in breach of contract.

**Disposal**

289. For the reasons advanced above and herein, all claims are dismissed as not well founded.

**Date sent to parties** 16 October 2026

**Appendix – List of Issues (extract of Case Management Note on 17 February 2026 (sent to parties 20 February 2026)**

***Time limits***

*(1) Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*

*1. Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?*
*2. If not, was there conduct extending over a period?*
*3. If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?*
*4. If not, were the claims made within such further period as 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?*

*The respondent will set out which complaints it argues are time barred.*

***Protected disclosures***

*1. Did the claimant make one or more qualifying disclosures as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:*

*(1) The disclosure relied upon is that the claimant complained to senior management (Nicola Wilson and John Vickers) on 6 March 2025 regarding unfair treatment and misuse of disciplinary process.*

*(2) Did she disclose information?*

*(3) Did she believe the disclosure of information was made in the public interest?*

*(4) Was that belief reasonable?*

*(5) Did she believe it tended to show that a person had failed, was failing or was likely to fail to comply with any legal obligation, namely failure to comply with Equality Act 2010 and Employment Rights Act 1996?*

*(6) Was that belief reasonable?*

*2. If the claimant made a qualifying disclosure, it was a protected disclosure because it was made to the claimant's employer*

***Detriment (Employment Rights Act 1996 section 48)***

3. *What are the facts in relation to the following alleged acts or deliberate failures to act by the respondent:*

    *3.1 Placing the claimant on trace monitoring;*
    *3.2 Bringing disciplinary proceedings against her; and*
    *3.3 Increased micromanagement by Mr Holmes of the claimant by him not supporting the claimant, making statements to the claimant such as "if you don't like the job you can quit", and him telling the claimant she had to use her breaks for medical appointments. The respondent's agent would liase with the claimant to ensure the precise nature of the micromanagement complaint was fully understand.*

4. *Did the claimant reasonably see that act or deliberate failure to act as subjecting her to a detriment?*

5. *If so, was it done on the ground that she made a protected disclosure?*

***Victimisation (Equality Act 2010 section 27)***

6. *Did the claimant do a protected act as follows: complain to senior management (Nicola Wilson and John Vickers) on 6 March 2025 regarding unfair treatment and misuse of disciplinary process which relates to failure to comply with the Equality Act 2010.*

7. *.Did the respondent do the following things:*
    *7.1 Place the claimant on trace monitoring;*
    *7.2 Bring disciplinary proceedings against her; and*
    *7.3 Increase micromanagement by Mr Holmes of the claimant by him not supporting the claimant, making statements to the claimant such as "if you don't like the job you can quit", and him telling the claimant she had to use her breaks for medical appointments. The respondent's agent would liase with the claimant to ensure the precise nature of the micromanagement complaint was fully understand.*

8. *By doing so, did it subject the claimant to detriment?*

9. *If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?*

*10. If so, has the respondent shown that there was no contravention of section 27?*

***Direct race discrimination (Equality Act 2010 section 13)***

*11. The claimant relies upon being of Nigerian origin.*

*12. What are the facts in relation to the following allegations:*

*(1) Her job was threatened in that there was Increased micromanagement by Mr Holmes of the claimant by him not supporting the claimant, making statements to the claimant such as "if you don't like the job you can quit", and him telling the claimant she had to use her breaks for medical appointments;*

*(2) In or around August 2024 the claimant encountered a racist customer, and after reporting the incident to her then line manager, they responded simply with a laughing face emoji;*

*(3) The claimant was not given sufficient support to attend [specialist] medical appointments;*

*(4) The claimant was not provided with sufficient support in respect of her IT systems.*

*13. Did the claimant reasonably see the treatment as a detriment?*

*14. If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race was or would have been treated? The claimant relies on a actual comparator namely "Michelle" and "Ricky" which failing a hypothetical comparison.*

*15. If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of race?*

*16. If so, has the respondent shown that there was no less favourable treatment because of race?*

***Direct sex discrimination (Equality Act 2010 section 13)***

*17. What are the facts in relation to the following allegations:*

*(1) The Claimant received insufficient support to attend [specialist medical] related …, namely from Mr Holmes over the period December 2024 to March 2025;*

*(2) Requested that she use breaks and/or annual leave to accommodate her recovery from medical treatment same period;*

*(3) Her return to work date was brought forward in March 2025.*

*18. Did the claimant reasonably see the treatment as a detriment?*

19. *If so, has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances of a different race was or would have been treated? The claimant relies on a hypothetical comparison, the acts relied upon being inherently linked to being a woman*

20. *If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of sex?*

21. *If so, has the respondent shown that there was no less favourable treatment because of sex?*

***Unfair dismissal***

22. *Can the claimant prove that there was a dismissal?*

    (1) *Did the respondent discriminate against the Claimant by directly discriminating against her on the grounds of her race and her sex, and by victimising her all as set out above.*

    (2) *Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide whether the respondent had reasonable and proper cause for those actions or omissions, and if not whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.*

    (3) *Was the fundamental breach of contract a reason for the claimant's resignation. The respondent avers that the claimant resigned not because of an alleged breach by the respondent, but because she was being investigated for gross misconduct, and resigned to avoid the disciplinary hearing, remaining disciplinary procedure and her potential dismissal for gross misconduct*

    (4) *Did the claimant affirm the contract before resigning, by delay or otherwise? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.*

23. *If the claimant was dismissed, it is accepted it was unfair.*

***Remedy***

24. *Does the claimant wish to be reinstated to their previous employment? CLAIMANT TO CONFIRM*

25. *Does the claimant wish to be re-engaged to comparable employment or other suitable employment?*

26. *Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*

27. *Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.*

28. *What should the terms of the re-engagement order be?*

29. *If there is a compensatory award, how much should it be? The Tribunal will decide:*

    (1) *What financial losses has the dismissal caused the claimant?*

    (2) *Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?*

    (3) *If not, for what period of loss should the claimant be compensated?*

    (4) *Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?*

    (5) *If so, should the claimant's compensation be reduced? By how much?*

    (6) *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*

    (7) *Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?*

    (8) *If so, is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?*

    (9) *If the claimant was unfairly dismissed, did they cause or contribute to dismissal by blameworthy conduct?*

    (10) *If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?*

    (11) *Does the statutory cap of fifty-two weeks' pay apply?*

30. *What basic award is payable to the claimant, if any?*

31. *Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?*

32. *Was any protected disclosure made in good faith?*

33. *If not, is it just and equitable to reduce the claimant's compensation? By what proportion, up to 25%?*

34. *What injury to feelings and interest should be awarded in respect of unlawful discrimination and/or detriment?*

***Breach of contract***

35. *Did the respondent breach the claimant's contract by not paying to her the £110 shopping voucher due to her in terms of her contract and if so, what damages should be awarded*