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EMPLOYMENT TRIBUNALS

Claimant: Ms Adeshree Annamallay

Respondent: Barclays Bank Plc

Heard at: East London Hearing Centre

On: 19 – 21, 25 – 27 April 2017 and
(In Chambers) 24 – 26 May 2017

Before: Employment Judge Goodrich

Members: Mr G Tomey
Mrs G Everett

Representation:

Claimant: Mr Bruce Gardiner (Counsel)

Respondent: Mr Will Dobson (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:-

1 The complaint of sex discrimination was not presented in time and it is not just and equitable to extend time and is dismissed.

2 The complaint of race discrimination complaint succeeds, to the extent further set out below.

Accordingly, unless the parties are able to resolve remedy themselves, the case is listed for a Preliminary Hearing (closed) for 2 hours on Friday 8 September 2017, at East London Tribunal Service, 2nd Floor, Anchorage House, 2 Clove Crescent, London E14 2BE.

REASONS

The Claim and the Issues

1 The background to this hearing and judgment is as follows.

2 The Claimant presented her ET1 claim form on 1 June 2016. Prior to that she had obtained, as required, an ACAS early conciliation certificate covering the period from 5 April to 5 May 2016. She gave her dates of employment as being on 10 April 2013 and continuing.

3 The Claimant has brought a claim of race discrimination and provided particulars of claim. At the time of her claim form being presented she was represented by an organisation called Paul Doran Law, who drafted her claim form.

4 The Respondent entered a response denying the Claimant's claims. At the time of drafting the response they provided a very brief response only, giving an explanation that there was an ongoing internal grievance. They asked for and were granted a temporary stay of the proceedings in order for the grievance processes to be concluded.

5 On 28 September 2016 there was a Preliminary Hearing before Employment Judge Warren. In the course of that Preliminary Hearing there was a clarification of the issues, with eight allegations of race discrimination harassment being recorded; together with a number of Case Management Orders. One of the Case Management Orders was the Claimant to provide further and better particulars of the claim; and giving leave for the Respondent to provide amended grounds of resistance.

6 Shortly after the Preliminary Hearing before Judge Warren the Claimant changed representation, instructing Mr Bruce Gardiner, counsel, on a direct access basis. He made an application to amend the list of issues and there was a further Preliminary Hearing on 18 December 2016 before Employment Judge Lewis.

7 The Preliminary Hearing before Judge Lewis was spent mainly considering an application by Claimant to further amend her claim. Parts of the application to amend were not opposed by the Respondent and parts were opposed. Judge Lewis allowed in part the application to amend. She, however, refused the application to amend insofar as they referred to incidents that occurred after the issuing of the first Employment Tribunal claim. She did not, however, make any comments to the effect that any such allegations could not be considered as part of the evidential background, or credibility of the parties.

8 There was a further application to amend by the Claimant, contained in an application dated 24 January 2017, which was allowed by Regional Employment Judge Taylor and Employment Judge Prichard, having been opposed by the Respondent.

9 In the course of these Case Management Orders leave was given to the parties to provide amended grounds of claim and amended grounds of resistance.

10 By the time that the case arrived at the hearing before this Tribunal, therefore, the documents we were asked to read included the Claimant's re-amended particulars of claim; and the Respondent's second re-amended grounds of resistance.

11 Helpfully, by the time that the case had got to this hearing, there was an agreed final list of issues for the Tribunal to determine. A copy of this list is attached to the Tribunal's judgment.

12 At the outset of this hearing there was an application by Mr Gardiner, on the Claimant's behalf, for further disclosure of documents. This was resisted by Mr Dobson, on behalf of the Respondent.

13 The Tribunal gave the representatives a preliminary indication on our views about the application. Helpfully, this preliminary indication was accepted by both representatives.

14 Thereafter, the representatives reached agreement between themselves as to adding further documents to the trial bundles provided for the Tribunal during the course of this Hearing.

15 We wish to record that both parties were well represented; and both representatives assisted the Tribunal in meeting its overall objective by co-operating with each other about the management of the trial.

16 Although the case had been listed for six days and the parties were notified that they should contact the Tribunal if that would be insufficient, the parties timetable provided by the representatives allowed insufficient time for the Tribunal to deliberate on and deliver its judgment. The closing submissions were only completed by the afternoon of the six days allocated for the case. This has led to the Tribunal needing to meet "in chambers" (in private) to deliberate on our decision; and led to a delay in providing the judgment.

The Relevant Law

17 In respect of a direct race discrimination claim, the Tribunal is concerned with less favourable treatment contrary to section 13 Equality Act 2010 ("EqA") when read with section 39.

18 In respect of sex discrimination harassment and race discrimination harassment the Tribunal is concerned with section 26 EqA when read with section 39.

19 In respect of race discrimination victimisation the Tribunal is concerned with section 27 EqA when read with section 39.

20 In respect of all three of the above types of race discrimination claim it is recognised that it is unusual for there to be clear, overt evidence of race discrimination; and that the Tribunal should expect to have to consider matters in accordance with section 136 EqA as to when and how the burden of proof may shift to the Respondent and what the Respondent must prove if it does. Guidance has been given as to how the burden of proof provisions should be interpreted in the case of *Igen Ltd v Wong* and other cases [2005] IRLR 258 (CA) and in numerous other subsequent cases. The Tribunal has read and adopts the guidelines set out in *Wong*. These guidelines are usefully considered through a staged process.

21 At the first stage the Tribunal needs to make findings of fact and determine, in respect of direct race discrimination, whether those show in respect of the Claimant and a real or hypothetical comparator, less favourable treatment and a difference in race. In respect of race discrimination harassment reference is made to unwanted conduct related to a relevant protected characteristic. In respect of race discrimination victimisation the burden of proof rests upon the Claimant to prove the performance of one or more of the “protected acts”, defined at section 27 EqA; and the receipt thereafter of some less favourable treatment than a person (real or hypothetical) who had not performed the protected act(s).

22 If the Tribunal is satisfied that there has been less favourable, or unwanted, or detrimental treatment (depending on the relevant statutory provisions) the Tribunal directs itself in accordance with section 136 EqA and asks, in respect of each item of less favourable treatment which has been proved, whether the Claimant has proved facts from which the Tribunal could reasonably conclude, in the absence of an adequate explanation, that the less favourable treatment was on the prohibited ground. Findings of fact which affect whether the Tribunal could so conclude will vary from case to case. Relevant examples include prior or subsequent acts of discrimination; failure to comply with guidance given in the Equality and Human Rights Commissions Code of Practice on Employment; some unexplained adverse or hostile conduct towards the Claimant revealed in the facts found by the Tribunal; inconsistent or evasive oral or documentary evidence from the employer. Unreasonable treatment on the part of an employer is not necessarily a matter from which the Tribunal will ultimately conclude that there was unlawful race discrimination, merely because the person adversely affected by it is a particular race, but it might be a matter from which an inference could be drawn.

23 If the Tribunal could reasonably conclude, absent a non discriminatory explanation, that there was unlawful race discrimination, we move to the Respondent’s explanation for the treatment. In the absence of an adequate explanation, the Tribunal will uphold the complaint that there has been race discrimination. The Tribunal looks to the employer to see whether it provides and proves a credible, non discriminatory explanation or reason for the difference in treatment. In the absence of such an explanation which the Tribunal accepts as proven on the balance of probabilities, the Tribunal will infer or presume that the less favourable treatment occurred on the prohibited ground.

24 Tribunals have often been encouraged to consider the question why the Claimant was treated as he or she was. Was the treatment on the prohibited ground?

25 Section 123 EqA sets out the statutory time limits for bringing a claim. The primary time limit, within which the Claimant must be presented in order to found the

Tribunal's jurisdiction, is three months from the date of the act(s) about which complaint is made, but this is subject to various qualifications. Section 123(3) EqA provides that any act extending over a period shall be treated as done at the end of that period. Case law has explained this further. Such an act may be something done in pursuance of a policy or practice, however informal, or a series of linked or connected acts. It cannot be a few isolated instances spread over time or a single act with continuing consequences (as, for example, a decision in respect of pay rates/non promotion). Section 123(3)(b) provides that a failure to do something is treated as occurring when the person in question decided on it. In the absence of evidence establishing the contrary, it is to be treated as done when the person does an act inconsistent with doing the omitted act or when the reasonable time for doing the omitted act expires. Beyond this, section 123(2)(b) provides that a Tribunal may consider a complaint which is out of time if it is, in all the circumstances, just and equitable to do so. This is a wide discretion which must be judicially exercised. The Tribunal will bear in mind that limitation periods ought not without good reason be disobeyed. The issue of prejudice is very important: how "old" is the claim, have memories faded or become less reliable, are witnesses unavailable, have documents disappeared? Is it unfair to either party to proceed? What explanation is given for delay? Have internal proceedings kept matters alive in the interim? Has the Respondent in any way misled the Claimant or been responsible for the delay? No list can be exhaustive, and we must bear in mind all relevant factors.

26 Beyond this the time limit may be affected by the early conciliation requirement set out in section 18A Employment Tribunals Act 1996 and supporting regulations.

The Evidence

27 On behalf of the Claimant the Tribunal heard evidence from the Claimant herself.

28 On behalf of the Respondent the Tribunal heard evidence from:

28.1 Ms Farmer, Heard of Sales Support for the Essex North London region for the Respondent.

28.2 Mr McDonald, currently Head of Service and Performance, East and South East region, for the Respondent.

28.3 Mr Aldred, currently Industry Director, Business and Professional Services Teams for the Respondent.

28.4 Mr Falkingham, at the relevant times Head of Corporate Business Banking for Essex for the Respondent.

28.5 Ms Balster, Business Manager for the Respondent.

28.6 Ms Maynard, Relationship Support Manager for the Respondent.

28.7 Ms White, Relationship Support Manager for the Respondent in the Respondent's Chelmsford office.

28.8 Ms Faulkner, Business Development Manager for the Respondent in their Chelmsford office.

28.9 Ms McWee, Relationship Support Manager for the Respondent in the Respondent's Chelmsford office.

29 In addition the Tribunal considered the documents to which we were referred in two lever arch files of documents (not including a bundle of pleadings) which, as referred to above, were supplemented during the course of this hearing.

Findings of Fact

30 We set out below the findings of fact we consider relevant and necessary to decide the issues we are required to decide. We do not seek to record each detail provided to us nor to make findings on every detail on which the parties disagreed. We have however considered all the evidence provided to us and we have borne it all in mind.

31 The Claimant, Ms Adeshree Annamallay, commenced employment with the Respondent, Barclays Bank Plc, on 15 August 2005. She has been continuously employed by the Respondent since that date and remains, at the time of this hearing, an employee of the Respondent.

32 The Claimant describes her origins as Indian South African.

33 Between August 2005 to September 2006 the Claimant worked for the Respondent in Clacton-On-Sea, Essex, working in a call centre and servicing customers accounts and providing different products to the customers.

34 From September 2006 to February 2008 the Claimant worked for the Respondent in Canary Wharf, London, in a Business Support Role in corporate banking.

35 From February 2008 until July 2009 the Claimant worked again in Canary Wharf, as a Corporate Credit Analyst in Property Finance.

36 Between July 2009 and October 2011 the Claimant worked once more in Canary Wharf, in a role with internal audit.

37 From October 2011 to March 2013 the Claimant worked for the Respondent in Ipswich, Suffolk in retailing banking as a Personal Banker.

38 So far as the Tribunal was made aware the Claimant had no significant problems either in how she did her work or with her colleagues up to the time which she worked for the Respondent in their Chelmsford branch (other than some comments made about her by a former colleague, Mr Jooste, who worked with the Claimant at the Respondent's Ipswich branch, to which we refer later in these findings of fact).

39 The Claimant has worked for the Respondent in their Chelmsford branch from April 2013 as a Relationship Support Manager.

40 The Claimant secured her position in Chelmsford branch after an interview. Two of the people that interviewed her were Ms Farmer and Falkingham, who were managers at the Chelmsford branch.

41 The Claimant described her role as a Relationship Support Manager as forming part of the team which did day-to-day servicing of customers. Their customers consisted mainly of people involved in running local businesses. The relationship support managers helped support a relationship support director, carried out credit risk analysis, annual reviews, went out to visit customers, considered lending requests and generally supported the customers with their queries and needs.

42 The relationship director to whom the Claimant initially provided support was Mr Dean Coppen until either February or April 2016; and after that, she was responsible for assisting two relationship directors, Mr Andy Vickers and Mr Andy Barker.

43 The line manager for the Claimant and other relationships support managers at the Respondent's Chelmsford office was Ms Joanne Farmer. Ms Farmer had been in that position from 2003.

44 Ms Farmer's line manager was Mr Jason Falkingham. His line manager was Ms Jane Galvin. Latterly, during 2015 and 2016, Ms Farmer reported to Mr McDonald although both Mr Falkingham and Mr McDonald had oversight of her work performance.

45 Whilst working at the Chelmsford office the Claimant has been the only South African national working in an otherwise white British team.

46 A number of the Claimant's new women colleagues had worked together for many years, were friends and formed a close knit, sociable team. When cross-examined Ms Farmer accepted that there was a clique of the ex Barclays Laindon office (also described as the Basildon office) was a clique and forceful, forming a tight knit social group.

47 The Respondent had a method of working that put relationship support managers into pairs, described as "buddies". The "buddy" was expected to cover his or her colleague's work, if something urgent arose whilst their buddy was away on a break, or holidays, or sickness absence, or other short term absence.

48 The above findings of fact are by way of background and are, so far as the Tribunal was made aware, matters on which there was no dispute between the parties.

49 In dispute between the parties is whether the Claimant was made to feel unwelcome in the Chelmsford office from the outset of her employment there as was her evidence; or whether she was welcome from the outset and any difficulties she subsequently had were of her own making, as was the evidence of witnesses of the Respondent.

50 The Tribunal finds that the Claimant did feel unwelcome with at least some of the team, particularly all or most of the close knit ex Basildon team members to whom we have referred, from the outset of the time that she worked in the Chelmsford office. We so find because:

- 50.1 This was the Claimant's own evidence, it appeared plausible and we had no doubts that she was genuine in feeling this.
- 50.2 Her evidence had some support from evidence to which we refer further below, in which Ms Farmer described some team members as being "very hostile" towards her (although it was not clear to the Tribunal whether this was meant as being from the outset of the Claimant's move to the Chelmsford office, or later on).
- 50.3 Following an informal complaint by the Claimant, a considerable time later (to which we refer later in our findings of fact) Mr McDonald carried out anonymous interviews with members of the Chelmsford team. A number of those interviewed described the Chelmsford team as containing cliques.
- 50.4 Further than that, one of those interviewed referred the Claimant having "had it difficult"; another to Ms Farmer having "favourites" Mr Falkingham being too close to Ms Farmer and protecting her; there being personality clashes between the Claimant and others which should have been nipped in the bud but was not; and "the Claimant never got on with anyone". Mr McDonald interviewed 13 relationship support managers, where the Claimant was not referred to by name; and three relationship directors, where (we understand although it was not made clear to the Tribunal) she was referred to by name.

51 Ms Jackie Faulkner, Ms Joanne Maynard, Ms Nicola McWee, Ms Elise Balster and Ms Tracy White had all worked together at the Respondent's Laindon office before working together at their Chelmsford office and were a close knit group.

Assessment of witness credibility

52 This is a case where there are extensive disputes between the parties as to what has occurred. The disputes of fact have not been easy for the Tribunal to make findings of fact on. Many are one person's word against another and some go back seven years before the commencement of the proceedings. We also have in mind that although a witness may be inaccurate or lacking credibility on one matter, they may be accurate on another.

53 On the whole the Tribunal found the Claimant's evidence to be reasonably plausible and convincing. We did not doubt that she was genuine in her evidence. This was also supported by a number of the Respondent's witnesses who accepted when cross-examined that they had no reason to doubt the Claimant's honesty. That is not to say that we accept all the Claimant's evidence. We consider that there were parts of her recollections that were inaccurate, or confused; and she may have misjudged or misinterpreted some of the actions that she has complained about.

54 The Tribunal's overall sense of the evidence provided from the Respondent was that the Tribunal was not being presented with the full story. There was a substantial amount of evidence of witnesses of the Respondent that gave the Tribunal the impression of needing to be prised out of the witnesses through cross-examination. Some of the

Respondent's witnesses were reasonably convincing and impressive, some considerably less so. Our overall impression, as stated above, was of the full truth being hidden from us. We give a few examples below such as:

- 54.1 Mr McDonald carried out a confidential survey of employees working in the Chelmsford branch following the Claimant making complaints to him about her treatment. A number of those questioned referred to cliques within Chelmsford office, their references to Mr Falkingham and Ms Farmer being too close to each other, there were a number of references to the Claimant having personality clashes and one of those questioned stating that she did not get on with anyone. No specific references to this issue were made in the Respondent's witness statements, even although Mr McDonald was conducting the investigation and was one of the Respondent's witnesses.
- 54.2 Although Ms Farmer accepted that she had referred to the Claimant being South African and direct on one occasion, she denied having done so on other occasions. She was unconvincing on this and the documentation to which we were referred showed that, nearer the time, she appeared to accept that she had done so more than once.
- 54.3 Only in cross-examination did it emerge that some of the Claimant's colleagues disapproved of her and Mr Brinn having lunches together frequently. Some considered that their relationship might be more than a professional business relationship. Yet none of this was referred to in the Respondent's witness statements, even although it was one of the specific allegations being made by the Claimant.
- 54.4 Mr Falkingham's evidence appeared at times to be evasive. There were many occasions when asked what appeared to be difficult questions when he either did not answer them or paused for a long time before answering the question. His explanation of why he decided to telephone Mr Jooste, who was of South African origins, to ask about the Claimant's culture and adapting to being British was extremely unconvincing (which we explore further below when considering the specific allegation).
- 54.5 The policy to which we were referred about Barclays values and dealing with race discrimination seriously was sharply at variance with how in practice Mr Falkingham, Mr McDonald and Mr Aldred dealt with the Claimant's complaints about Ms Farmer frequently referring to her South African origins and being direct; and an allegation she made about a colleague telling people not to have lunch with her because she was foreign. There was a conflict between their witness statements extolling the equal opportunities training they had and written policies with the manner in which the Claimant's complaints were dealt with in practice.

Allegations under section A of the list of issues- The treatment received by the Claimant from the Essex team

(i) Teasing about coarse jokes and potential relationships

Allegation A(1)- Nipple Tassels/Willy Warmer comments made at a relationship support managers lunch in December 2013, Olio, Italian restaurant

55 In dispute between the parties is whether members of the Chelmsford office made teasing comments to the Claimant of a sexual nature.

56 The parties agreed that there was a Christmas lunch in December 2013. They also agreed that Mr Ruston, who worked at Chelmsford office, was given a nipple tassel as a present in a "Secret Santa" present exchange. Mr Ruston had complained of nipple soreness after a long run.

57 In dispute is whether, at the Christmas lunch Ms Faulkner shouted across to the Claimant "Adeshree do you know what a nipple tassel is?"; and Ms Balster joined in general laughter and said "its just gone over Adeshree's head"; and Ms Faulkner then asked "Adeshree do you know what is a "willy warmer"?"

58 This is one of the more difficult issues to resolve, with the Claimant's allegation about it only being made some years after the alleged event. On the balance of probabilities we find that the remarks were not said at the Christmas event. The Claimant, when cross-examined, was confident that the "Secret Santa" present exchange had taken place on the morning of the Christmas lunch. She was inaccurate in this as documents produced during the hearing showed that the present exchange was about two weeks after the Christmas lunch. We find that the Claimant was inaccurate in her recollection. It is possible that some such comments might have been made around when the Secret Santa exchange took place, we find however that they did not make any such remarks (if they occurred) did not take place at the Christmas meal.

Allegation A(i)(2) – teasing about potential relationship with colleague Christian Smith and accessing her computer to find details of such a relationship

59 The parties agreed that Mr Smith had been a member of the Chelmsford office and had come back to attend a leaving party, which took place around March 2014. The parties also agreed that Mr Smith and the Claimant were dancing together at the party.

60 The parties dispute whether Ms McWee and Ms Balster were teasing the Claimant about her doing so, calling her naïve about Mr Smith fancying her and being obvious that he did. Ms Balster denied that she looked at the Claimant's computer to find details of such a relationship.

61 On the balance of probabilities, the Tribunal finds that Ms Balster did so but that Ms McWee did not, at least on the following day- the Claimant's evidence being that both teased her the following day and that there was teasing from several colleagues during the following months. It was unlikely, as Ms McWee worked part time and her days of work did not include the following day that she would have done so the next day.

62 On the balance of probabilities we find the Claimant's evidence the more convincing as regards Ms Balster and her colleagues on this issue including because:

62.1 It is consistent with the evidence produced by Ms Maynard when cross-

examined that various members of the team disapproved of Mr Brinn and the Claimant frequently having lunch together. It is plausible that there would be likely to be a similar interest in the Claimant, a married woman, dancing with a man at a party.

62.2 Various witnesses of the Respondent accepted that there was a certain amount of teasing banter that took place in the office.

62.3 The Claimant's evidence about Ms Balster accessing the Claimant's computer and seeing a message about Mr Smith the next day or so appeared to be convincing. Her explanation was that she was giving him information about where to stay in the States (USA) where he was about to go on holiday. The Claimant and Ms Balster were what were described as "buddies" and responsible for covering each others work when one or the other was absent and it is plausible that they would look at each other's emails from time to time.

63 The Claimant felt upset by being teased by her colleagues in this and other respects referred to below, feeling that she was being made the butt of their humour.

Allegation A(i)3 – lewd gestures and jokes

64 Did a number of the Claimant's colleagues, Ms Faulkner, McWee, Balster and White, in the course of sharing jokes, tease the Claimant about not knowing about oral sex and the jokes about this going over her head?

65 The Claimant is vague about when she says this happened stating that it was at some point in 2014. She did not specify when at the time and made no such complaint during the grievance process as she subsequently took out. The allegation first emerged, so far as we were made aware, in the course of further particulars given in this litigation, a long time after when the event was said to take place.

66 In this context the Tribunal does not consider we are able to make a finding of fact with any confidence one way or the other as to whether this happened. If pushed to make a finding the Tribunal would say that the Claimant has not positively satisfied the Tribunal that the remarks were made.

Allegation A (i) (4) – repeatedly suggesting that a particular customer fancied the Claimant

67 Here there is a flat contradiction between the two parties' versions. The Claimant's evidence was that this occurred on about five occasions in 2014 and 2015.

68 On the balance of probabilities the Tribunal finds that one or two comments probably were made in jest, as part of office banter, but that it was not done frequently and not something that the individuals concerned would have been likely to have remembered when questioned about it a long while after the events.

Allegation A(i)(5) – suggesting that Dean Coppin fancied the Claimant

69 This is an allegation that, around the end of January 2015, after the Claimant's relationship director at that time, Mr Coppen, had given the Claimant a lift when visiting a client, the Claimant felt dizzy as it had been a warm day; and told Ms Balster that when asking her if she was okay. The Claimant says that Ms Balster then said "Adeshree, Dean made his car warm so he can get you to take your clothes off for him"; and Ms McWee overheard the comment and both started laughing at the Claimant.

70 Again, on the balance of probabilities, the Tribunal find that this remark was made and was consistent with office banter that took place from time to time. The individuals concerned were probably unaware that the Claimant was taking such remarks in anything other than light hearted vein.

Allegation A (ii) – teasing about the Claimant lunches

71 The Claimant says that from about May 2013 until about September 2015, Ms McWee would pick on the Claimant going to lunch with friends, criticising her choice of lunch, venue, criticised her for going to an Indian restaurant for curry so that she smells of curry and made the office stink; and criticised her choice of Nandos asking why she went there given that the food was so horrible.

72 On balance of probabilities we find that, whilst Ms McWee might have occasionally made a light hearted comment about the Claimant going to Nandos so often, we find that she did not criticise her for having curries or criticised her choice of Nandos. When meeting with Mr McDonald in January 2016 the Claimant complained about being teased about things such as a dress, who she went to lunch with and messages on her phone; but did not complaint about being criticised for what she ate. Ms McWee appeared to the Tribunal to be convincing in her evidence that she and her children went to Nandos themselves. Ms McWee's evidence that was unaware that Nandos has South African origins was also plausible and convincing, as there appeared to be no obvious reason why she would know this.

Allegation A (iii) – referring to the Claimant as 'Princess'

73 The Claimant says that these comments started in about 2014 and continued until the start of her sick leave; that it happened regularly in the ordinary course of typical office conversations; and gives particular examples of Ms Farmer introducing her to customers at the 2014 Christmas party as "princess"; and one unknown member of staff placing a "princess" sticker on her computer in 2014.

74 The parties agree that Mr Lutterloch, one of the Claimant's colleagues, did from time to time call the Claimant "princess". The Claimant accepted when cross-examined that she got on well with Mr Lutterloch and once he had explained that it was meant as a compliment and he admired her, she did not object to him calling her "princess".

75 Ms Farmer also agreed in her evidence that, at a Christmas party in December 2014, when the Claimant was talking to a client, she (Ms Farmer) made a comment to the client about the Claimant being referred to as "princess" in the office.

76 The parties dispute whether the expression was used frequently and by many

people in the office; whether the Claimant was upset about it; and whether an anonymous individual typed and put a laminated sticker on her work computer in 2014.

77 We find that more people and on more occasions than the Respondent's witnesses accept did refer to the Claimant as "princess". Ms Farmer's evidence that it was only Mr Lutterloch that was did so was unconvincing as she referred to it being the Claimant's nickname in the office, when speaking with the client at the Christmas party. Mr Falkingham referred to having heard several people call the Claimant "princess" in paragraph 35 of his witness statement; although he was more guarded as to who these people were when he was cross-examined.

78 We also find, on balance of probabilities, that there was a sticker placed on the Claimant's computer. We do not believe that this was something made up by the Claimant or that she was mistaken on this.

79 The Tribunal does not find, however, that the Claimant asked the individuals at the time not to call her princess at the time. We find that what took place was that they heard Mr Lutterloch calling the Claimant princess; the Claimant seeming to be happy with him doing so and assuming that she was happy with it as an occasional nickname. If the Claimant did ask team members not to call her princess, we find that she would have done so infrequently and without any great conviction so as for the individuals concerned to realise that they were upsetting her. If she had been regularly taunted about this against her wishes we consider it likely that she would have mentioned it in her meeting with Mr McDonald to whom she complained about being teased about her dress, who she went to lunch with and messages on the telephone.

Allegation A (iv) - suggesting that the Claimant had a fake designer bag

80 The Claimant and relevant witnesses for the Respondent agreed that some of the women returned from holidays with handbags. Some had been to Turkey on holiday and bought non designer handbags. The Claimant had been on holiday in Thailand and had bought a new designer handbag.

81 The parties dispute whether the women teased the Claimant about her handbag and joked that it was a fake designer handbag and that the Claimant then produced a receipt to prove it was genuine.

82 On the balance of probabilities we find that some of the remarks were probably made in what was intended to be a light hearted manner about the Claimant returning with a designer handbag. That is consistent with the Claimant's nickname of "princess" and consistent with a perception amongst some of the Claimant's colleagues that she came from a privileged South African background.

Allegation A (v) – lack of support with organising Macmillan fund raising event

83 The Tribunal finds that the disputes about this issue are ones of perception more than of substance, with both the Claimant's and the Respondent's perceptions having validity.

84 The Respondent organised Macmillan fund raising event in 2014, with coffee, cakes and refreshments being provided. In this year in question it was the Claimant's turn to organise the event.

85 The Claimant accepts that various individuals, including Ms Faulkner, baked cakes for the event.

86 The event was a success with a record amount of money being raised during this year that the Claimant organised it.

87 The Claimant felt that she received insufficient support, particularly from Ms Farmer. Ms Farmer accepts that with the office being short of staff that day she may have asked the Claimant to undertake a task for a customer whilst the Claimant was pre-occupied with organising the event.

88 Although we accept that the Claimant genuinely felt that she was unsupported, we find that there was no deliberate intention not to support her. The Claimant agreed that Ms Faulkner and Ms McWee baked cakes for the event and the Tribunal does not believe that Ms Farmer would have wanted a charitable fund raising event to be anything other than successful.

Allegation A (vi) – reading the Claimant's phone messages without her consent

89 This is an allegation that Ms Balster, who sat next to the Claimant and was her "buddy" read messages for the Claimant on an occasion in September 2015.

90 On the balance of probabilities we find that Ms Balster did do so on this occasion. We so find including because:

- 90.1 It was a complaint made by the Claimant to Mr McDonald relatively contemporaneously. It does not appear to us to be something that the Claimant would make up.
- 90.2 Equally, if it did take place, it would be something that Ms Balster might be embarrassed about and reluctant to agree that she did.
- 90.3 It is close in time to a text message exchange between the Claimant and Mr Brinn in which they were exchanging text messages about Jo (Maynard) and Nikki (McWee) not liking the two of them going out to lunch together and "whatsapping" together. Colleagues were showing an interest in their relationship and gossiping about it so looking at a text of the Claimant's would have been consistent with that sort of curiosity.
- 90.4 Ms Balster had the opportunity to do so as she sat on a desk next door to the Claimant and was her "buddy".

Allegation A(vii) – comment made to Adam Brinn about lunching with the Claimant

91 This is a dispute as to whether, in about September 2015, Ms McWee told Mr Brinn that he should not go to lunch with the Claimant, or trust her, because she was foreign.

92 In the bundle of documents produced for the Tribunal, there was an exchange of text messages between the Claimant and Mr Brinn about there being gossip about their relationship with each other.

93 Although not referred to in the Respondent's witness statements, as referred to above, Ms Maynard, when cross-examined, did say that there were concerns in the office about Mr Brinn and the Claimant having a relationship went beyond a professional relationship; and being concerned as Mr Brinn's partner was pregnant and the Claimant was married. There was, therefore, disapproval that their friendship might be going beyond professional boundaries. It is also consistent with the previous allegation in that there was a text message (to which the Tribunal was referred in the bundles of documents) between Mr Brinn and the Claimant referring to Elise (Balster) seeing emails in the Claimant's inbox.

94 The Tribunal finds that these remarks were made.

Allegation A(viii) – criticism about the Claimant's phone usage

95 There is no great dispute as to the facts about this allegation. The Respondent witnesses accepted that they did criticism the Claimant's when her private telephone went off in the office. Their explanation was that it was noisy and disturbing to them whilst at work.

96 The Claimant's evidence was that she was no different to her colleagues and would also have their telephones "ping", but they would not be criticised in a similar manner.

97 On the balance of probabilities we find that it is likely that individuals other than the Claimant would also be asked to switch off their telephones or make them less noisy. It appears to us likely that the noise would have been distracting in an office and the Claimant would not have been singled out in this respect, although it may have been her perception that she was.

Allegations in section B of the list of issues- Treatment from Joanne Farmer and Jason Falkingham as line managers

Allegation B(i)- Joanne Farmer observing team members ganging up on the Claimant but taking no action to ensure that other team members treated her with respect

98 As referred to above Ms Farmer had worked for a number of years with the individuals that had transferred from the Respondent's Laindon office to Chelmsford and had close relationships with them. The Tribunal considers, and finds, that it is likely that Ms Farmer was aware of the views of the Chelmsford office about the Claimant; and was aware of the culture of the office. Ms Farmer was, for example, as referred to above, aware of the Claimant having a nickname of "princess"; and she worked predominantly at

the Chelmsford office and next to, or close by those she was managing in an open plan office.

99 The Tribunal finds that Ms Farmer was aware of at least some of the matters to which we have referred above (to the extent we find them to have occurred) even although she may not have physically witnessed them herself. We found Ms Farmer unconvincing at times as a witness and reluctant to give the Tribunal a full story, as referred to in our findings earlier above. Ms Farmer also referred, in an interview she had with Mr Aldred to which we refer later in our findings of fact, to some people being very hostile to the Claimant.

100 Other than for a short period when the Claimant was placed on an action plan (to which we refer below) Ms Farmer's desk was some distance away from the Claimant's and we accept that Ms Farmer may not have personally witnessed some of the teasing that was taking place.

101 Mr Farmer did, however, reprimand Ms Balster on one occasion when she felt that Ms Balster behaved aggressively towards the Claimant. This occurred during the time that the Claimant was placed on an action plan (to which we refer later below); and Ms Farmer was sitting beside the Claimant about two days a week in order to monitor the action plan.

Allegation A (ii) – being told that she is “South African, a direct person and needed to change her approach” by Joanne Farmer at most of her one to ones from April 2013 to August 2015

102 The Tribunal finds that this was a regular comment, or criticism, made by Ms Farmer towards the Claimant. We so find because:

102.1 In notes made by the Claimant of her interview with Mr Falkingham on 27 August and 1 September 2015, which was a relatively contemporaneous record, the Claimant referred to Ms Farmer telling her that on 5 August 2015 she was told by Joanne Farmer that she had spoken to Jason Falkingham and HR and decided to put her on an action plan rather than PEP because she was South African and a direct person.

102.2 She complained of being told continuously by Ms Farmer that she was South African, a direct person and needed to change her approach.

102.3 Likewise, in a complaint she made to Mr McDonald, she complained to Mr McDonald that Ms Farmer frequently referred to her as being South African and direct and complained that she did not see her being South African as a problem and felt that it was the only team where it would be perceived as a problem.

102.4 In Ms Farmer's witness statement she was insistent that she only made such a reference once in a one to one meeting.

102.5 This part of Ms Farmer's evidence was unconvincing. For example, in her

contemporaneous response to the Claimant's complaint Ms Farmer wrote "Adeshree (the Claimant) talks about comments I have made in relation to direct communications style and South Africa which is true". The fact that she refers to comments in the plural suggests that she was agreeing with the Claimant's allegation and did not, at that time, consider her behaviour to be in this respect to be problematic.

102.6 In cross-examination she backtracked from her witness statement when challenged on what she had written at the time but said that she could only remember one occasion.

102.7 In notes of a conversation between Ms Farmer and the Respondent's Human Resources Advisers, to which Mr Falkingham was copied, a reference was made to Ms Farmer stating "she is from South Africa and her tone of voice can sound harsh".

103 The Tribunal finds that Ms Farmer realised some while after the events that her frequent references to the Claimant being South African and direct might be considered racially offensive and has sought to downplay them. This is consistent with our findings of fact above and also with other instances in Ms Farmer's evidence when the Tribunal considered that she was giving an incomplete or misleading picture in her evidence. Referring to the Claimant as being South African and direct was an assumption on her part, as she accepted when cross examined that she did not have any South African friends; and gave no explanation for why she considered that being direct was a characteristic of South Africans in general, or a non white South African of Asian origins in particular.

Allegation B (iii) – being told by Joanne Farmer on 16 July 2015 she would be placed on a Performance Improvement Plan due to her allegedly direct approach as a result of her nationality and refusing subsequently to provide her with a sufficient explanation or supporting evidence to justify such a step

Allegation B (iv) – being placed on an "action plan" on 5 August 2015 by Joanne Farmer and Jason Falkingham due to her allegedly direct approach as a result of her nationality

104 It is agreed by Ms Farmer that she did tell the Claimant on 16 July 2015 that she would be placed on a Performance Improvement Plan; and that she was placed on an "action plan" on 5 August 2015 by her, having consulted with Mr Falkingham first.

105 The Respondent's Performance Improvement Plan is an informal capability procedure of the Respondent- if the employee concerned does not complete the Performance Improvement Plan to the satisfaction of the manager, formal disciplinary proceedings on capability grounds would be likely to commence.

106 An action plan is a more informal process where an employee has their performance actively monitored. It does not form part of informal or formal capability procedures.

107 Ms Farmer's explanation for telling the Claimant that she would be put on a

Performance Improvement Plan then subsequently putting her on an action plan was that it was a combination of negative feedback she had received from Mr Coppen, comments from clients and a recent poor “click tools” survey response (being a form of customer survey). She denied telling the Claimant on 5 August that it was because she was South African and direct although, as found above, we find that she did tell the Claimant this when giving her explanation for putting the Claimant on an action plan. We so find because:

- 107.1 Part the explanation putting the Claimant on an action plan was because of Mr Coppen, the Relationship Director that the Claimant was responsible for supporting at that time. Mr Coppen did not appear as a witness at the Tribunal although he remains an employee of the Respondent, we were informed. So far as the Tribunal is aware no explanation was given for him not being called as a witness for the Respondent.
- 107.2 Although the Claimant send an email to Ms Farmer asking for further details of the criticisms being made of her, Ms Farmer did not respond to it.
- 107.3 The Claimant gave Mr Falkingham detailed comments about Mr Coppen's criticisms in about a 60 page document. Mr Falkingham, like Ms Farmer, did not respond to the Claimant's written document.
- 107.4 When cross-examined about the specific criticisms and the “click tool” survey Ms Farmer was unable to give any satisfactory evidence to support her explanation.
- 107.5 In the performance appraisal in which she referred to placing the Claimant on a Performance Improvement Plan, Ms Farmer referred to the Claimant being a “direct individual” and needing to spend more time reflecting before taking action.

Allegation B (v) – being told by Jason Falkingham at informal meetings on 27 August 2015 and 1 September 2015 that he agreed with Joanne Farmer's criticisms and she should change her approach and adopt a “chameleon style” given her allegedly direct approach concerning her nationality

Allegation B (vi) – Jason Falkingham ignored the Claimant's complaint made in September 2015 about Elise Balster accessing her phone to read her personal messages

Allegation C (i) - Jason Falkingham failed to address the Claimant's complaint about Joanne Farmer's discriminatory remarks adequately at the informal meetings on 27 August 2015 and 1 September 2015

108 Mr Falkingham had concerns about the Claimant's work, particularly her relationship with Mr Coppen, the relationship director she was supporting at that time.

109 Mr Falkingham's explanation for these concerns were that they were based mainly on Mr Coppen making complaints to him about the Claimant, partly from Ms Farmer doing

so and partly from his observation of the two of them starting to bicker together.

110 Mr Falkingham and the Claimant had meetings on 27 August and 1 September 2015. They disagree about who called the first meeting although for our purposes this does not matter.

111 The Claimant complains that Mr Falkingham indicated to her through his body language and attitude in their meeting on 27 August that he was not taking her seriously, a complaint Mr Falkingham denies. The Tribunal finds that the Claimant's interpretation of the meeting is correct. This is borne out by Mr Falkingham's evidence generally being very unimpressive (as indicated above) and particularly so in these elements of his cross-examination. Mr Falkingham's notes of the meeting concentrated on his reasons for holding the meeting, while giving very little reference to the complaints the Claimant was making. For example, when the Claimant sent, as they had agreed, her notes of the meeting by email to Mr Falkingham she included a number of serious complaints about Ms Farmer, the treatment she had received in the team in which she worked, about Ms Balster; and provided to the meeting 60 pages of documents she had prepared showing, she said, that she was being caused a lot of extra work by mistakes made by Mr Coppen. All these were ignored by Mr Falkingham, his explanation being that they were not relevant and a distraction. This was a surprising response from someone who claimed in his witness statement to have had training on equal opportunities and is at variance with the Respondent's own policies.

112 Amongst the notes of the meetings on 27 August and 1 September recorded by Mr Falkingham were:

- 112.1 Concerns Mr Falkingham had about the working relationship between her and Mr Coppen and that these were affecting client relationships and that she was currently on an action plan to help her improve client satisfaction.
- 112.2 He recorded the Claimant complaining that others disliked her and were picking on her, complaining about cliques, people verbally attacking her and being told that she was too direct the clients.
- 112.3 Mr Falkingham responding that he saw no evidence of difficulties in the team and that the external profile of the team was very positive and the employee opinion survey results constantly strong.
- 112.4 Agreeing steps that should be taken by the Claimant to help with her work.
- 112.5 Agreeing that the Claimant would write her own notes of the meeting.

113 On 2 September 2015 the Claimant sent an email to Mr Falkingham with her record of the meeting. Amongst the points made in her minutes of the meeting were the following:

- 113.1 Complaining that at her one to one meeting on 5 August 2015 Joanne Farmer had told her "I have spoken to Jason Falkingham and HR and it was decided to put you on an action plan rather than PEP because you

are South African a direct person and it is something the bank can address quick and easy”.

- 113.2 Complaining that Joanne Farmer was ignoring the issues she raised with her, continuously defending Dean Coppen and continuously telling her “Adeshree you are South African a direct person and you need to change your approach”.
- 113.3 Stating further down “I feel being South African and direct is not a problem at all”.
- 113.4 Ms Farmer referring to her as a “trouble maker”.
- 113.5 Complaining that Elise Balster was looking at messages of hers on her personal mobile that she had left on her desk.
- 113.6 Various other points in the Claimant’s notes of the meeting that were similar to those of Mr Falkingham.

114 Amongst the action points noted by Mr Falkingham in his notes of the meeting and by the Claimant in her notes was a reference by Mr Falkingham to her style with different clients to suit the circumstances e.g. to be more of a “chameleon”. Mr Falkingham’s explanation for this was that it had nothing to do with the Claimant and her South African nationality but was merely for her to adapt her style according to the clients she was supporting.

115 The Tribunal does not accept this explanation. In his handwritten notes of the meeting Mr Falkingham’s notes record “African direct – gave my view – chameleon”.

116 Additionally, on his own initiative, Mr Falkingham telephoned a former colleague of the Claimant, called Mr Jooste, who had worked with her when she previously worked in the Respondent’s Ipswich retail bank.

117 Mr Jooste was not the Claimant’s line manager, nor someone line managed by Mr Falkingham. He is, however, of South African origins although, not so far as we are aware, of Asian South African origins.

118 Mr Falkingham’s explanation for why he spoke with Mr Jooste to discuss the Claimant and her approach was particularly unconvincing and, frankly, the Tribunal does not believe that he was being honest in this aspect of his evidence. His replies were evasive, punctuated by long pauses and contradictory. He disputed at first that he knew Mr Jooste was South African, did not refer to his conversation with Mr Jooste in his witness statement and made no reference to what Mr Aldred recorded, in an investigation of a grievance subsequently brought by the Claimant, of his discussions with Mr Jooste.

119 Mr Aldred recorded Mr Falkingham as explaining that Mr Jooste also had a South African background; that Mr Jooste had said that there had been challenges in the Claimant’s previous role in Ipswich; and Mr Jooste said “he has adapted to British culture and she hasn’t”.

120 We do not accept Mr Falkingham's explanation for contacting Mr Jooste. The true explanation, we find, was, as is the Claimant's case, that he was doing so to lend support for Ms Farmer's assertion that the Claimant was "South African and direct" as part of her justification for putting the Claimant onto a Performance Improvement Plan, subsequently changed to an action plan.

121 This is consistent with Mr Falkingham ignoring the Claimant's complaints about Ms Farmer, Ms Balster and her team mates, and ignoring the Claimant's criticisms of Mr Coppen; whereas he accepted Mr Coppen's criticisms of the Claimant.

122 Nor does the Tribunal believe that Mr Falkingham was unaware, as he asserted in his evidence, that the Claimant's complaint about Ms Farmer's constant references to her being South African when she (the Claimant) did not feel that being South African should be a problem, was a complaint of race discrimination. If he was unaware that the Claimant was making a complaint of race discrimination we do not understand why he should chose to contact a South African about the Claimant, rather than one of the Claimant's previous line managers.

123 Also of note is that the Respondent's employee relations (Human Resources) advisors sent a copy of notes they made of a conversation Ms Farmer had with them in which they refer to Ms Farmer stating "she is from South Africa and her tone of voice can sound harsh". Mr Falkingham did not challenge Ms Farmer about this.

124 Evidence of Mr Falkingham having some hostility towards the Claimant can be shown by Mr Aldred, in a subsequent investigation of the Claimant's grievance, referring to Ms Farmer telling him that Ms Farmer had said that she was told by Mr Falkingham "the honeymoon is over and relationship directors are finding AA (the Claimant) challenging".

125 Mr Falkingham's ignoring of the Claimant's concerns is at variance with policies to which the Tribunal was referred. One such policy is a policy promoting respect, diversity and performance in the workplace, described as "The Barclays Way". This includes a statement that Barclays does: "welcome and foster diversity within our workplace"; and "take a zero tolerance approach to bullying and harassment".

Allegation B (vii) – Joanne Farmer attempted from 4 January 2016 onwards to overburden the Claimant's already excessive workload, by allocating her additional work on the secondment of a colleague, despite other colleagues having a lesser workload

126 As referred to earlier above, the Respondent had a system where work relationships support managers would divided into pairs where one was the "buddy" of the other. The buddy was expected to cover the others work when they were away, on holidays or other short term absences from work.

127 Up to the incident in question the Claimant, so far as the Tribunal was made aware, had covered her buddy, Ms Balster, when Ms Balster was away. She had on a previous occasion covered a one month secondment.

128 Ms Balster obtained a six months secondment, learning of this in December 2015.

129 Ms Farmer informed the Claimant that she would be covering Ms Balster's work while she was on the six months secondment.

130 The Claimant told Ms Balster that she did not have the capacity to do this and she refused to do so.

131 Ms Farmer, in turn, was upset with the Claimant's refusal. She told the Claimant that she would inform Ms Galvin (a more senior officer) and HR of this and asked her to rethink the decision as it went against the "Barclays values". On 4 January 2016 there was an exchange of emails between the two of them following their meeting that day which ended with Ms Farmer stating to the Claimant in an email "would you like to speak to me or just keep sending emails?" She accepted, when cross-examined, that her response was rude.

132 The Claimant, by email dated 6 January 2016, made a complaint about the issue to Mr McDonald, a more senior manager (the Tribunal is unsure whether at that stage Mr McDonald was sharing Ms Farmer's management with Mr Falkingham or whether he was Mr Falkingham's manager).

133 By email dated 7 January Ms Farmer apologised to the Claimant for the manner in which she had approached the issue; and expressed the hope that her (Ms Farmer's) suggestion that they remove the more demanding clients would alleviate those concerns.

134 The issue was resolved by other members of the team also taking on some of Ms Balster's work.

Allegation B (viii) – Joanne Farmer refused her request made on 7 April 2016 for a half day's holiday, and instead insisted that she take full days holiday

Allegation B (ix) – Joanne Farmer on 8 April 2016 refused her request to leave work at 3.00pm in circumstances where she had been working until 8.30pm the previous evening

135 On 7 April 2016 the Claimant sent an email to Ms Farmer to request half a day's leave on 28 April 2016.

136 In dispute is whether Ms Farmer refused her request, explaining that the bank's policy had changed about having a half day's leave (as was the Claimant's evidence); or whether she did not refuse and the Claimant herself changed her request from a half day to a full day's leave request.

137 The Claimant clearly understood that her request was being refused, as it forms part of an interview she had with Mr Aldred as part of Mr Aldred investigating a grievance the Claimant subsequently took. This records that she had been told that she could not take half a day's holiday anymore as Joanne Farmer had said that the policy had changed and her request was declined.

138 As part of an investigation of this complaint, Mr Falkingham's personal assistant, Jo Wiseman, recorded that the Claimant had requested half a day's holiday which she had discussed with Jo Farmer and that Adeshree (the Claimant) then approached Jo (Farmer)

and that they had a conversation during which Adeshree advised that she wanted the whole day rather than half a day; and Jo Farmer stated she could have either; and that Adeshree then said she only wanted the half day which was what was booked for her but then cancelled. There appears therefore to be a contradiction between the two email messages. On the balance of probabilities we find that the request was refused, although Ms Farmer may have had a misunderstanding about the Respondent's policy at that time.

139 The Claimant, on 8 April 2016, sent Ms Farmer an email asking for flexi time – to leave the office at 3.00pm rather than her normal finishing time of 5.00pm. She referred to having left the office at 8.30pm the previous evening. The Respondent has a flexi time policy.

140 Ms Farmer did not reply to the email. Her explanation is that she was in one to one meetings and that when, in the afternoon, she looked into the Claimant's office, the Claimant had left. In contrast, the Claimant said that she had not left and worked until 5.00pm because she had not been given permission.

141 This is another finding that is not particularly easy to make. On the balance of probabilities we find that Ms Farmer was unaware of the request until late and that when she looked into to see the Claimant, either the Claimant had left, or was not at her desk at that point. The Claimant's request was made at short notice and it appears likely that if Ms Farmer was in meetings, or involved in other tasks she may not have read the Claimant's request until too late.

Allegation C (ii) – Gary McDonald failed to address the Claimant's complaint against Joanne Farmer adequately at the investigation meeting on 12 January 2016 and in the outcome meeting on 18 February 2016

142 Mr McDonald had been copied with the Claimant's complaint about having to take over Ms Balster's work whilst Ms Balster was on a six month secondment. Ms Galvin was another recipient and the manager of Mr McDonald. They, together with a human resources business partner, decided that Mr McDonald should meet with the Claimant to discuss her complaint and find out whether she wanted to lodge a formal grievance.

143 Mr McDonald met the Claimant on 12 January 2016 and they had a long discussion of concerns or complaints raised by the Claimant.

144 Mr McDonald took notes of the meeting and sent them to the Claimant. The Claimant returned the notes with some additional notes of her record of the meeting.

145 Amongst the concerns or complaints made by the Claimant were the following:

145.1 She did not feel that she had been made to feel welcome by some relationship support managers from the start of the time she worked at the Chelmsford office. She felt that she had been picked on by older staff members, who had either downplayed her ideas or teased her about things such as her dress, who she goes to lunch with or messages on her phone; and that she continued to feel uncomfortable with the team as, she said, had others.

- 145.2 She felt that Jo (Farmer) continually talked about two recurring issues – the fact that she is South African and had a direct communication style.
- 145.3 Amongst the additional points made by the Claimant which she returned to Mr McDonald was an allegation that another member of staff had told her that they had been told not to trust and go to lunch with her because she is foreign and that they should stay away from her.

146 Mr McDonald telephoned the Respondent's employment relations department. Amongst their notes of the telephone conversation are the following:

- 146.1 A reference to the Claimant being "South African and of Indian descent".
- 146.2 She had alleged that a member of staff told another colleague that she could not be trusted because she is foreign.
- 146.3 She had also received feedback about being direct and alleges that it was said that this was due to her ethnicity.
- 146.4 The concerns Adeshree (the Claimant) has in relation to her colleague included alleged comments related to her nationality/ethnicity.

147 In Mr McDonald's note of a conversation he had had with the Claimant on 20 January 2016 Mr McDonald referred to the Claimant feeling that this was the only team in which her national origin would be questioned.

148 In cross-examination Mr McDonald disputed that he realised at the time that the Claimant's complaints included a complaint of race discrimination.

149 The Tribunal does not believe Mr McDonald on this point. He was hesitant and indeed evasive when cross-examined on this issue and his evidence was at variance with his witness statement giving details of equal opportunities training he had received, his seniority with the Respondent; his evidence that he had considered other grievances; and the Respondent's policies to which we have referred, which also refer to race discrimination being treated as a matter of disciplinary action. More likely, we find, was that he was seeking to turn a blind eye to what he clearly understood at the time might well be a complaint of race discrimination. The notes made by the Human Resources advisor's discussion with Mr McDonald, referred to at paragraph 143 above, suggests that Mr McDonald was aware that the Claimant was complaining of race discrimination. It also appears reasonably obvious that the Claimant putting in bold type that a member of the team had told her that they (the team she worked in had been told not to trust and go to lunch with her because she is foreign was a complaint about discriminatory treatment because of her foreign nationality).

150 Mr McDonald's subsequent dealing with the Claimant's grievance also persuades us that he was turning a blind eye to what were serious allegations being made by the Claimant.

151 Mr McDonald sent a questionnaire to the relationship support managers the

Claimant worked with. These asked a number of questions about the leadership of Jason Falkingham and Joanne Farmer; and whether there were any poor behaviour on display such as bullying and whether anyone might feel that they were victimised. He did not in that questionnaire refer to the Claimant by name, his explanation being that he wished to get a feel for the atmosphere in the team rather than highlighting the Claimant's specifically.

152 He also asked questions of others within the team including relationship directors. The responses were anonymous, although some of the people responding were identified by name to the Tribunal.

153 Amongst the responses made to Mr McDonald were the following:

- 153.1 Mr Lutterloch in his reply stated that there were cliques within the team; that Adeshree (the Claimant) could have had more support from Jo (Farmer) and from her buddy (Elise Balster) and "she has had it difficult". He also stated that she did not help herself as her approach was hands off and 'that is not my job'. Overall he stated there was good atmosphere and he had not seen any bullying.
- 153.2 Ms Tracy White stated that there were cliques within the team, that she had not seen any bullying but that passions could run high which could come across as aggressive.
- 153.3 Another relationship support manager stated that there was a clique of the ex Basildon RSMs which is forceful and that the whole team likes a gossip; and that there was an issue of Ms Farmer behaving unprofessionally by shouting things down the office rather than speaking to people quietly.
- 153.4 Another relationship support manager stated that Jo (Farmer) had favourites and if they went out socially they would get on better, which she felt was unprofessional and the Jo Farmer was prone to losing her temper. The individual concerned also stated that Jason (Falkingham) was too close to Jo Farmer and protected her; and that when she had raised an issue about Jo Farmer with Jason Falkingham this was ignored.
- 153.5 Another relationship support manager referred to the Claimant not being treated differently from anyone else but that there were personality clashes which needed to have been nipped in the bud and needed senior leadership feedback.
- 153.6 Another relationship support manager questioned whether Jo Farmer and Jason Falkingham were too close to provide a challenge to each other.
- 153.7 Ma Jackie Faulkner referred to the Claimant being the only member of the team "not playing ball" whereas there was a strong team who worked and socialised together well.

- 153.8 A Relationship Support Manager, Mr Ruston, referred to the Claimant being offered assistance but not accepting it; and that there were personality clashes and she never got on with anyone.
- 153.9 Ms Balster also referred to Ms Farmer tending to shout across the room and stated that she did not think that the secondment was handled in the right way for the wider team and that the Claimant should have been consulted rather than having assume that her reaction would be positive.
- 153.10 Mr Coppen's response was that the Claimant did not make life easy for herself, was welcomed well but did not react positively.
- 153.11 A number of those interviews spoke warmly and positively about the leadership, of Ms Farmer in particular.

154 Mr McDonald received a response from Ms Farmer as to his notes of his meetings with the Claimant. Amongst her responses, as referred to earlier above, was in response to the Claimant's complaint of having been referred to as being South African and direct. Her response included the typed statement "Adsheree talks about comments I have made in relation to direct communications style and South African which is true"; and then went on to explain this. Of note, as referred to earlier in this judgment, is her reference to comments (plural) as opposed to her evidence the comment was only made on one occasion.

155 Mr McDonald met with the Claimant on 18 February 2016 to give her the outcome of his grievance investigation. He notified her that having interviewed the team and collated feedback, Jo Farmer was to undertake a meeting to cover the culture, atmosphere and collective standards for the team to improve morale and achieve consistency. He set out a number of bullet points as to the way forward.

156 Mr McDonald accepted when cross-examine that he had not explored with any of the team their comments about issues such as the Claimant having personality clashes or having found it difficult. Nor did he explore the allegation about being told that the team had been told not to go out to lunch with her because she is foreign. Nor did he explore with Ms Farmer the allegation of frequent references to her South African nationality. In short, Mr McDonald's evidence was unimpressive and gave the impression that he knew of the Claimant making a reference to being racially discriminated against and was unwilling to investigate it.

Grievance investigation by Mr Aldred

157 Although Mr Dobson submitted that no findings of fact should be made about Mr Aldred's grievance investigation we disagree. So far as we consider them of evidential value in deciding the issues we are required to decide, we consider them relevant. Indeed, so must the Respondent, as they called Mr Aldred as a witness to the hearing, produced documents in the bundle supplied by him and must, therefore, have anticipated that his evidence would be considered relevant.

158 The Claimant was unhappy about Mr McDonald's investigation of the Claimant's

grievance and submitted a formal written grievance.

159 The Claimant's letter was headed "discrimination in the workplace and been treated unfairly". She stated that she wished to raise a formal grievance against her line manager Joanne Farmer on the basis of being discriminated due to her national background. She stated that Ms Farmer kept saying "Adeshree you are South African and a direct person you need to change your approach, she never wants to help nor support me from the time I started within the Essex team". The Claimant also made a complaint about having spoken to Jason Falkingham about the discrimination and that he told her that she needed to adopt "the chameleon style".

160 The Claimant complained that she had raised an informal complaint and that the issue was just ignored (she was complaining about Mr McDonald's investigation). She went on to state that she felt that she was not taken seriously so had no choice but to use an external solicitor to help support her. She expressed the hope that an independent person would be appointed to investigate the complaint.

161 Mr Aldred was appointed to investigate the complaint. His position was described as being industry director, business and professional services teams. He is experienced in investigating grievances, has received training in the Respondent's disciplinary, capability and grievance procedures, taken refresher training; and has also taken a course in subconscious bias.

162 In order to investigate the grievance Mr Aldred met the Claimant on 23 June 2016.

163 Mr Aldred spoke with Mr McDonald, Mr Falkingham and Ms Farmer. We have made some references to their responses in our findings of fact, such as Mr Falkingham's explanation for having contacted and spoken with Mr Jooste.

164 Mr Aldred did not uphold the Claimant's grievance. The Tribunal was unimpressed with Mr Aldred's evidence; and the impression created to the Tribunal was of his relying on the responses given by Messrs Farmer, Falkingham and McDonald rather than carrying out any independent investigation of his own. He rejected the allegation of bullying without investigating the comments of any of the individuals who had responded to Mr McDonald survey in ways that might have been seen as warning signs. He accepted Ms Farmer's assertion that she had only raised the issue of the Claimant being South African and direct only once. He did not give an explanation as to why he preferred what Ms Farmer had said rather than the Claimant. He accepted Mr Falkingham's assurance that it was not evident to him that the alleged discrimination was a concern to her. He gave no opinion as to whether Ms Farmer's reference to the Claimant being South African and direct (which she did accept that she made on one occasion) was in itself racially discriminatory.

Evidence as to time limits

165 The Claimant's explanation for bringing her claim when she did, rather than at an earlier time was as follows:

165.1 She had been a loyal Barclays employee for many years and wanted to

make a success of her role as she had each of her previous ones.

- 165.2 She wanted to get on well with her colleagues and Joanne Farmer and hoped matters would improve if she became more established in the team.
- 165.3 She did not wish to be labelled as a trouble maker particularly as Joanne had labelled her as one after she had raised issues about her working relationship with Dean Coppen.
- 165.4 She felt that the behaviour she was experiencing from her colleagues was intensifying and made her feel more stressed; and that being placed on a performance improvement plan, subsequently changed to an action plan was unfounded and caused her to join a union for the first time.
- 165.5 She had attempted to resolve the issues with Jason Falkingham then made an informal complaint about the mishandling of cover arrangements for Elise Balster's secondment.
- 165.6 Her key complaint of discrimination was completely ignored and she was accused of failing to have co-operated in her attitude to cover the work.
- 165.7 Once she had received Mr McDonald's outcome she decided to adopt a twin track approach of raising a formal grievance but also issuing proceedings. The Claimant was referring to her meeting with Mr McDonald on 18 February 2016.
- 165.8 The Claimant contacted a solicitor in 2016. Although she does not remember the exact date she did so, her evidence suggests that it would have been around the time that Mr McDonald gave the Claimant her grievance outcome. He relied on the solicitor as to Employment Tribunal time limits to "guide her along".

Closing Submissions

166 Both representatives gave lengthy and helpful typed submissions, to which they expanded orally. They gave submissions as to the relevant law, the facts they invited the Tribunal to find and went point by point through the individual allegations.

167 Whilst the Tribunal was reading the respective typed submissions, we gave the representatives an opportunity to read the other representative's submissions. The Tribunal encouraged the representatives to concentrate on commenting on the other representatives' submissions, rather than repeating their typed submissions.

168 We do not set out the submissions in detail although we have borne them in mind.

Conclusions

169 We have considered our conclusions on the allegations before considering whether they amount to acts extending over a period; and if, or the extent to which, we consider that they are out of time, whether time limits should be extended. The issue of whether the claims would otherwise be successful is relevant to considering the respective prejudice that would be caused to the parties if time limits were to be extended or not to be extended. Prejudice, as referred to in the summary of the relevant law above, is one of a number of factors to be considered when considering whether it would be just and equitable to extend time limits.

Whether the burden of proof passes to the Respondent

170 We have considered whether the Claimant has proved on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent has committed an act of discrimination against the Claimant which is unlawful.

171 Although the burden of proof does not shift to the Respondent in respect of each of the allegations, considering the evidence we have heard as a whole, we consider that the Claimant has proved facts so as to cause the burden of proof to shift. We so find including because:

- 171.1 Other than a vague reference from Mr Jooste to Mr Falkingham about the Claimant having had challenges at her previous role in Ipswich, the Claimant had worked for the Respondent for many years in a number of different offices without apparent problems. At the very least, she had nothing like problems in the previous offices of the Respondent where she had worked that she experienced in the Chelmsford office. This is not a case, as is sometimes an Employment Tribunal's experience, of an employee starting with a new employer and having difficulties with a wide range of different people from near the outset of their employment.
- 171.2 From the survey conducted by Mr McDonald some support was given to the Claimant's complaint that she was not made to feel welcome at the Chelmsford office. There could, of course be a wide range of reasons why this might be the case, but it calls for a further explanation as to whether it might be connected with the Claimant's race and nationality.
- 171.3 The Claimant was the only non white member of a team coming into a workplace which various individuals described in the survey conducted by Mr McDonald as being "cliquish" and which Ms Farmer accepted was cliquish.
- 171.4 There was a surprising divergence between the strong policies of the Respondent on issues such as dealing with bullying and harassment and taking discriminatory behaviour seriously. As set out in the Tribunal's findings of fact above, the Claimant's complaints of such discrimination were at best dealt with thoroughly inadequately or at worst ignored.
- 171.5 As referred to earlier above, the Tribunal had concerns about parts of the

Respondent's evidence, particularly the sense that we were not provided with a full and accurate account by some of the witnesses for the Respondent and some of the Respondent's witnesses appearing to the Tribunal to be at times evasive when giving their evidence.

- 171.6 We have found Ms Farmer to have made frequent references to the Claimant being South African and direct. As she stated in evidence that she has no South African friends this gives the appearance of being an assumption on her part, perhaps a stereotypical assumption.
- 171.7 The Tribunal rejected Mr Falkingham's explanation for why he contacted a South African former colleague of the Claimant to enquire about her adaption about British culture and recorded Mr Jooste response when Mr Falkingham was being interviewed by Mr Aldred.
- 171.8 As set out below, the Tribunal has concluded that the Claimant did, in respect of some of the allegations she has made, suffer sex discrimination, and race discrimination.

Individual Allegations

172 The Tribunal sets out below our conclusions as to the individual allegations of the Claimant.

ALLEGATIONS A- The treatment received by the Claimant from the Essex team (all of which are allegations of racial harassment, sex discrimination harassment and direct race discrimination)

Allegations A- (i) (1) – (5) Teasing about coarse jokes and potential relationships

Allegation A (i) nipple tassel/willie warmer comments

173 The first allegation (nipple tassel/willy warmer comments) we found not to have taken place, at least at the Christmas meal in question.

174 This allegation fails.

Allegation A (i) (2)- teasing about potential relationship with Mr Smith and accessing her computer to find details of such a relationship

175 The allegation concerning Mr Smith was, by contrast, found by the Tribunal to have taken place; and the Claimant to have had her computer accessed to find details of such a relationship.

176 The Tribunal finds and concludes that the treatment in question was not because of the Claimant's race. It was part of office banter taking place and white employees would also engage in time to time in banter about personal relationships.

177 The Tribunal has considered, next, whether the complaint succeeds (subject to considerations about time limits – as stated above we consider time limits at the end of these conclusions).

178 The conduct in question was unwanted conduct. The Claimant was upset about the comments and did not want Ms Balster to access her computer to look for possible details of Mr Smith being attracted to the Claimant.

179 The conduct concerned was related to the Claimant's sex. The Claimant was being teased about a male colleague being sexually attracted to her as a woman.

180 The Tribunal does not consider that the behaviour concerned was done with the purpose of violating the Claimant's dignity or creating an adverse environment for her. It was part of office banter. The Tribunal does conclude, however, that it had that effect. We accepted the Claimant's evidence that it did.

181 Was it reasonable for the conduct to have that effect having in mind the Claimant's perception and the other circumstances of the case? We find and conclude that it was. On its own, it appears a relatively trivial incident. Taken in context, however, it formed part of the office environment in which the Claimant was teased and felt uncomfortable. She did not fit in to what was a tight knit team, many of whom had worked together for many years and were forceful.

Allegation (i)(3) – Lewd gestures and jokes

182 As referred to in our findings of fact the Tribunal did not consider itself able to make a finding of fact with any confidence one way or the other. This claim, therefore, fails.

Allegation A (i) (4) - repeatedly suggesting that a particular customer fancied the Claimant

Allegation A (1) (5) – suggesting that Dean Coppen fancied the Claimant

183 The Tribunal does not consider that these suggestions were related to or because of the Claimant's race. We have concluded that in that office environment, it was the kind of office banter that might from time to time be made, whatever the individual's racial origins. We have referred in our findings of fact to office banter amongst several of the employees, of whom only the Claimant was white. Jokes of this kind of nature could have been made against any of the team, whatever their racial origins.

184 The allegation succeeds as a sex discrimination harassment claim for similar reasons as for the allegation concerning Mr Smith. It was unwanted from the Claimant's point of view. It was related to the Claimant's sex in being a suggestion that the male customer in question was sexually attracted to the Claimant as a woman. In the context of the Claimant being teased, being uncomfortable about the teasing and being married, it was reasonable for her to consider it to have had the effect of violating her dignity or creating an adverse environment for her. This complaint succeeds.

185 Likewise, for similar reasons, we have concluded that the allegation concerning

Mr Coppen also succeeds as a sex discrimination harassment complaint, although fails as a race discrimination complaint. It was banter of a sexual nature that Mr Coppen fancied the Claimant and wanted her to take her clothes off.

Allegation A (ii) - teasing about the Claimant's lunches (allegation of race discrimination harassment and direct race discrimination)

186 In the Tribunal's findings of fact above the Tribunal found that Ms McWee did not criticise the Claimant for having curries or going to Nandos, although she occasionally made a light-hearted comment about going to Nandos so often. We found that Ms McWee was unaware of Nandos South African origins. The remarks were not related to, or because of her racial origins. This complaint fails.

Allegation A(iii) – referring to the Claimant as 'princess' (allegation of race discrimination harassment and direct race discrimination)

187 The Tribunal's findings of fact above were, in summary, that the Claimant was referred to as "princess" by Mr Lutterloch and some other colleagues; and that Ms Farmer made a comment to a client of the Respondent, in the Claimant's presence, at a Christmas party in December 2014 that she was referred to as "princess" in the office.

188 The Claimant did not object to Mr Lutterloch calling the Claimant princess. His comments were not unwanted comments.

189 The Tribunal is not convinced that references made by others in the office to the Claimant as princess were unwanted on her part. Even if they were the Tribunal does not consider it reasonable for it to have had the necessary effect of creating an adverse environment for her. As the Claimant was content for Mr Lutterloch to refer to her as princess and did not make colleagues aware that she was unhappy with them giving her such a nickname, we do not consider it reasonable for it to have had an adverse effect. Nor could such remarks, in this context, reasonably be perceived as a detriment, as required in a direct race discrimination claim.

190 So far as Ms Farmer's comment to a client of the Respondent is concerned, this is of a different nature.

191 The comment in front of a client was unwanted conduct. It was a private nickname given to her by a colleague and used occasionally at work amongst work colleagues.

192 Was it related to the Claimant's race? We consider that it was. It came from a perception that the Claimant came from a privileged South African background.

193 We do not consider that Ms Farmer's comment had the purpose of violating the Claimant's dignity or creating an adverse environment. It was thoughtless on her part. We do consider, however, that it had that effect. It felt disrespectful to her and that her manager was taking part in teasing her. It was unprofessional on the part of Ms Farmer.

194 Likewise, putting a sticker on the Claimant's computer of "princess" was

disrespectful and another form of teasing. It was making a general statement for anyone walking around the office to see.

195 To this extent, therefore, the Claimant's allegations succeed (the reference by Ms Farmer to a client at a work party and the sticker that was placed on the Claimant's computer).

Allegation A (iv)- suggesting that the Claimant had a fake designer handbag

196 The conduct in question was unwanted.

197 The Tribunal concludes that the remarks were not related to the Claimant's race. The context was of the women concerned discussing their holiday purchases and comparing handbags they had bought. There may have been an element of jealousy involved, but we do not consider that it was related to the Claimant's race. The race discrimination complaint for this allegation fails.

Allegation A (v) – lack of support with organising MacMillan fundraising event (race discrimination harassment and direct race discrimination claim)

198 This complaint fails because of the findings of fact we have made. Although the Claimant had a perception of being unsupported, this was not found to have been the case in the Tribunal's findings of fact. The event was a success and colleagues of the Claimant, such as Ms Faulkner and Ms McWee baked cakes for the event; and Ms Farmer wanted it to be a success and was pleased that it had been.

199 As regards the race discrimination harassment complaint, therefore, the Claimant did not have a reasonable perception of being subject to an intimidating etc environment.

200 As regards direct race discrimination, the Tribunal does not consider that the Claimant suffered a detriment. The event was a success and colleagues such as Ms Faulkner and Ms McWee helped make the event a success.

201 This complaint, therefore, fails.

Allegation A (vi) - Reading the Claimant's phone messages without the Claimant's consent (race discrimination harassment and direct race discrimination claims)

Allegation A (vii) Comment made to Adam Brinn about lunching with the Claimant (race discrimination harassment and direct race discrimination claims)

202 These complaints also fail because of the findings of fact made by the Tribunal.

203 Although the conduct was unwanted, it was unrelated to the Claimant's race. The individuals concerned disapproved of the behaviour both of the Claimant and of Mr Brinn. Mr Brinn was white. The Claimant's race was not any part of the reason why these actions were done, but because there was some disapproval from colleagues of both the individuals about them because (in the opinion of those concerned) they were having a

relationship that might be going beyond a professional relationship when both were either married or living with a partner.

Allegation A(viii) – criticism about Claimant’s phone usage (allegation of race discrimination harassment and direct race discrimination)

204 These allegations also fail because of the findings of fact we have made. We found that it was likely that other individuals would be asked to switch off their telephones or make them less noisy; and that the Claimant was not singled out in this respect.

Issues at section B of the list of issues – treatment from Joanne Farmer and Jason Falkingham as line managers- allegations of racial harassment and direct race discrimination

Allegation B (i) – Joanne Farmer observing team members ganging up on the Claimant but taking no action to ensure that other team members treated her with respect (race discrimination harassment and direct race discrimination claims)

205 Amongst the Tribunal’s findings of fact on this issue were the following:-

205.1 Ms Farmer was aware that some people working with the Claimant were very hostile to her (as recorded in her interview with Mr Aldred).

205.2 This assessment of Ms Farmer’s was consistent with comments made in responses to the questionnaires sent by Mr MacDonald to members of the Chelmsford team who made a number of references to the Claimant and also referred to matters such as personality clashes.

205.3 Ms Farmer did intervene when she observed Ms Balster behaving towards the Claimant in an overly aggressive manner.

205.4 Nonetheless, as Ms Farmer’s interview with Mr Aldred, when she described some people as being very hostile to the Claimant was around June 2016, she had not succeeded in preventing such hostility.

205.5 Although Ms Farmer probably did not witness the incidents referred to in section A of the list of issues, she was aware of how the team perceived the Claimant.

205.6 Ms Farmer herself contributed to the Claimant’s difficulties at the workplace. She had an assumption about the Claimant being too direct because she was South African. She, tactlessly, told a client, in front of the Claimant, about her office nickname of “princess”.

206 Ms Farmer, therefore, was aware of hostility towards the Claimant from members of the team she managed and failed to take action, or effective action, to prevent this. Why was this?

207 The Tribunal has concluded that a factor in Ms Farmer's failure to take effective action was related to the Claimant's race, not an intention to racially discriminate but more an issue of the Claimant being different and not fitting in to the prevailing culture within the office. Having hostility from colleagues towards her created the hostile effect referred to in section 26(b)(ii) of the EqA.

208 Whether, therefore, we consider our conclusions on the basis of the reversal of the burden of proof and Ms Farmer failing to convince the Tribunal that the treatment was in no sense whatsoever on the ground of race; or on the question of why the treatment occurred, the complaint succeeds.

209 This complaint of the Claimant, therefore, succeeds.

Issue B(ii) – being told that she is “South African, a direct person and needed to change her approach” by Joanne Farmer most of her one-to-ones from April 2013 to August 2015 (claims of race discrimination harassment and direct race discrimination)

210 As recorded in the Tribunal's findings of fact Ms Farmer did this.

211 The behaviour was clearly unwanted and led to the Claimant taking out a grievance on the issue.

212 Referring to the Claimant as South African, a direct person and needed to change her approach was an assumption on Ms Farmer's part, perhaps a stereotypical assumption. Ms Farmer had no South African friends and was unable to give any satisfactory explanation for why she thought that the Claimant's manner might be direct because she was South African.

213 Ms Farmer's reference to the Claimant being South African and direct was also part of her explanation for putting the Claimant initially on a performance improvement plan then modified to an action plan.

214 The Tribunal does not consider that Ms Farmer's remarks were done with the purpose of either violating the Claimant's dignity or creating an adverse environment for her. We consider, however, that it had that effect. It upset the Claimant and led to her taking out a grievance against Ms Farmer. It was also reasonable for it to have had that effect. It was how, in part, Ms Farmer explained putting the Claimant on to a performance improvement plan, then action plan. The Claimant, with justification, felt that her being South African should not be perceived as a problem by her manager.

215 This complaint of the Claimant succeeds as a race discrimination harassment complaint.

216 Although we have not analysed the complaint as a direct race discrimination complaint we would have upheld the complaint as a direct race discrimination complaint for similar reasons as those set out above.

Issue B(iii) – being told by Joanne Farmer on 16 July 2015 she would be placed on a performance improvement plan due to her allegedly direct approach as a result of her

nationality, and refusing subsequently to provide her with a sufficient explanation or with supporting evidence to justify such a step (claims of race discrimination harassment and direct race discrimination)

Issue B(iv) – being placed on an “action plan” on 5 August 2015 by Joanne Farmer and Jason Faulkingham due to her allegedly direct approach as a result of her nationality

217 Amongst the Tribunal findings of fact on these issues were the following:-

217.1 Part of the justification for the performance improvement plan, subsequently action plan, was because of criticisms from Mr Coppen, who was not called by the Respondent as a witness, although he could have been.

217.2 Neither Ms Farmer nor Mr Faulkingham were able to give a satisfactory explanation for their criticisms of the Claimant’s work when cross-examined on the issues.

217.3 Neither did they respond to the Claimant’s challenges made at the time to these criticisms.

217.4 Contrary to Ms Farmer’s evidence she did, when telling the Claimant that she would be putting her on a performance improvement plan, explain that she needed to change her South African direct approach when dealing with customers.

218 The Tribunal has considered this complaint as a race discrimination harassment complaint.

219 The treatment concerned was clearly unwanted and the Claimant complained about it.

220 The conduct was related to the Claimant’s race in that it was part of the justification for putting her onto the plans that her approach was South African and direct.

221 As with the issue B(ii) above, we consider that the behaviours from Ms Farmer and Mr Faulkingham were not done with the purpose of violating the Claimant’s dignity or having the adverse environment referred to in section 26 EqA; they did, however, have that effect. They formed part of the Claimant’s complaints and grievances considered by Mr McDonald and Mr Aldred.

222 Was it reasonable to have that effect? In the context of what occurred the Tribunal has concluded that it was reasonable for it to have had that effect.

223 Part of Mr Dobson’s closing submissions were to dispute that telling the Claimant that she should be put on a performance improvement plan could not be a detriment as the plan was never implemented. We do not agree- the Tribunal considers that it was adverse treatment as referred to in section 26(1)(b) EqA and was detrimental treatment.

Being informed that she was being placed on a performance improvement plan was the first step, albeit informal, in capability disciplinary action. It was worrying and upsetting for the Claimant and she felt that it was unjustified. Being placed on an action plan was less obviously a detriment; however, it was action being taken to address her managers view that she was under-performing in her job; and the explanation, in part, was on the basis that she was South African and direct. Nor did the Respondent demonstrate in their evidence that the Claimant was in fact under-performing.

Issue B(v) – being told by Jason Falkingham at informal meetings on 27 August 2015 and 1 September 2015 that he agreed with Joanne Farmer’s criticisms and she should change her approach and adopt a “Chameleon style” given her allegedly direct approach as a result of her nationality (claims of race discrimination harassment, direct race discrimination and race discrimination victimisation)

Issue B(vi) – Jason Falkingham ignored the Claimant’s complaint made in September 2015 about Elise Balster accessing her phone to read her personal messages (claims of race discrimination harassment, direct race discrimination and race discrimination victimisation)

Issue C(i) – Jason Falkingham failed to address the Claimant’s complaint about Joanne Farmer’s discriminatory remarks adequately at the informal meetings on 27 August 2015 and 1 September 2015 (allegation of race discrimination harassment, direct race discrimination and race discrimination victimisation)

224 The Tribunal’s findings of fact show that Mr Falkingham’s approach to the Claimant’s complaints was to support and justify Ms Farmer’s criticisms of the Claimant; not to deal with or adjudicate on the Claimant’s complaints that she had been racially discriminated; nor to act on the Claimant’s complaint that Ms Balster accessed her private telephone to read her personal messages.

225 So far as Mr Falkingham referring to the Claimant needing to adopt a “Chameleon style”, the Tribunal did not find Mr Faulkingham to be aware that this had any specifically South African connotations. To that extent the Claimant’s complaint is unsuccessful.

226 Nonetheless, Mr Falkingham agreed with Ms Farmer’s view of the Claimant having a direct approach perhaps because of being South African. As referred to in the Tribunal’s findings of fact, he telephoned Mr Jooste, as another South African who had previously worked with the Claimant in another office, to enquire about South Africans; and used what Mr Jooste told him as part of his explanation for his treatment of the Claimant when he was interviewed by Mr Aldred.

227 The Tribunal has concluded that all three complaints succeed as race discrimination harassment complaints including because:-

227.1 The treatment, in all three respects, was unwanted.

227.2 Mr Falkingham agreed with Ms Farmer’s assessment of the Claimant being South African and direct.

227.3 Because Mr Falkingham agreed with Ms Farmer's view he did not address her complaints of race discrimination against her by Ms Farmer.

227.4 We accept Mr Dobson's submission about the Claimant's complaint against Ms Balster not forming a major part of her complaints. We do not, accept, that Mr Falkingham's failure to address it was purely an oversight. We consider, having listened to his evidence as a whole, that it was part of Mr Faulkingham seeking to support Ms Farmer and having also an unfavourable opinion of the Claimant, as shown by remarks he made as to the Claimant's "honeymoon" being over. We consider that, probably unconsciously, his opinion of the Claimant was motivated in part by his perception of her South African characteristics.

227.5 As referred to in the Tribunal's findings of fact, Mr Falkingham, despite the Respondent having good policies, was not complying with them and, instead seeking to support a view of Ms Farmer's that the Claimant's communication style was South African and direct.

227.6 The Claimant was upset about the treatment and complained about it to more senior management. The treatment concerned was motivated by an unwillingness to consider the possibility that the Claimant was being racially discriminated against and led to the Claimant feeling, understandably and appropriately, that her complaints were not being treated seriously.

228 These allegations succeed. Mr Faulkingham was dismissive of the Claimant's complaints.

229 As the complaints succeed as race discrimination harassment complaints, it is unnecessary to consider whether they succeed as direct race discrimination and race discrimination victimisation complaints.

Issue B(vii) – Joanne Farmer attempted from 4 January 2016 onwards to overburden the Claimant's already excessive workload, by allocating her additional work on the secondment of a colleague, despite other colleagues having a lesser workload

Issue B(viii) – Joanne Farmer refused her request made on 7 April 2016 for a half day's holiday, and instead insisted that she take a full day's holiday

Issue B(xi) – Joanne Farmer on 8 April 2016 refused her request to leave work at 3pm in circumstances where she had been working until 8:30pm the previous evening.

(all the above are claims of race discrimination harassment and direct race discrimination)

230 The Tribunal's findings of fact include that:-

230.1 The incident involving Ms Balster having her work allocated to the Claimant was handled poorly, as Ms Farmer herself accepted when cross-examined; and Ms Balster also felt that it had been badly handled when replying to the survey conducted by Mr McDonald.

230.2 The issues concerning the Claimant's holiday request were not handled particularly well either.

230.3 As regards Ms Balster's secondment and the Claimant being allocated her work, Ms Farmer dealt with the issue swiftly, by clarifying to the Claimant that the reallocation of work was for three weeks only. In fact, following the Claimant's complaint about the issue Ms Balster's work was reallocated to other team members.

231 The Tribunal accepts, whether the burden of proof passes to the Respondent or not on these issues, that they were not related to or because of the Claimant's race because:-

231.1 So far as Ms Balster is concerned, Ms Farmer's quick steps to rectify the issue are indicative of a manager recognising readily that she had been at fault in how she handled the matter, rather than any deliberate attempt to treat the Claimant unfavourably.

231.2 Team members were expected to cover their colleagues on short-term absences. Although Ms Farmer did not initially make clear to the Claimant that her cover was intended to be for a period of a few weeks only, not the full six months secondment, this was her intention. The Claimant was being treated no differently to any other team member.

231.3 Although Ms Farmer's email complaining about the Claimant's frequent emails to her was abrupt, we do not consider this to be because of the Claimant's race, as her considered response was helpful in resolving the problem.

232 The Tribunal accepts Ms Farmer's explanation that her dealing with the Claimant's half day holiday request was a misunderstanding of the Respondent's procedures, rather than unfavourable treatment related to or because of the Claimant's racial origins.

233 These complaints, therefore, fail.

Issue C(ii) – Gary McDonald failed to address the Claimant's complaint against Joanne Farmer adequately at the investigation meeting with the Claimant on 12 January 2016 and in the outcome meeting on 18 February 2016 (allegations of race discrimination harassment, direct race discrimination and race discrimination victimisation)

234 Amongst the Tribunal's findings of fact on this issue were that Mr McDonald, contrary to his evidence, did understand the Claimant to be making a complaint of race discrimination; made a decision not to explore these complaints, contrary to guidance given in the Respondent's policies; and failed to carry out a proper investigation of the Claimant's complaints of race discrimination.

235 The Tribunal has concluded that this allegation succeeds as a complaint of race discrimination harassment including because:-

235.1 Mr McDonald's failure to investigate the Claimant's complaints of race discrimination was unwanted and the Claimant appealed against his grievance outcome.

235.2 His failures were related to the Claimant's race. Part of her complaints involved complaints about unfavourable treatment due to her South African origins.

235.3 It had the effect, although we do not consider the purpose, of creating an adverse environment for the Claimant. She felt that justified complaints on her part were not being considered.

235.4 It was reasonable for the Claimant to consider the conduct to be having that adverse effect. The Respondent has good equal opportunities policies. The Claimant was entitled to believe that her complaint would be properly and fairly investigated. The Claimant had been able to work in various offices of the Respondent without the kinds of difficulties she experienced at the Chelmsford office; and entitled to expect the kinds of difficulties she was complaining about would be considered rigorously.

236 This complaint therefore succeeds.

Conclusions- Time limits issues

237 Whether or not the complaints set out above succeed depends on whether the Tribunal has jurisdiction to consider them. These, in turn, depend on whether the complaints amount to an act extending over a period and if so until when; whether all or some of the complaints are out of time; and whether, if out of time, time limits should be extended.

238 The issues set out in section A of the finalised list of issues involve the treatment received by the Claimant from the Essex team colleagues of hers, except that Ms Farmer also referred to the Claimant as "princess" to a client of the Respondent at the social event organised by the Respondent.

239 The last of the complaints under section A of the list of issues that the Tribunal has upheld is the one involving Mr Coppen which occurred around January 2015. The Tribunal accepts that the teasing experience by the Claimant from the team she worked in was something that occurred at times up to this incident and probably beyond. The last of the allegations is, however, around January 2015 and do not consider them to have been an act extending over a period beyond January 2015.

240 The Claimant carried out her early conciliation notification on 5 April 2016 and was issued with an Early Conciliation Certificate on 5 May 2016. She issued her Employment Tribunal claim within a month of the issue of her certificate, namely on 1 June 2016.

241 The parties' representative's submissions were that the cut off date under the early conciliation rules had the effect of extending time limits to acts of alleged discrimination occurring from 1 February 2016 onwards.

242 The Tribunal's view is that time limits were extended through the early conciliation procedures to 6 January 2016, three months before the early conciliation notification. In practice, it makes little difference whichever of the two it is as the only event that appears to straddle these two dates was the investigation meeting between the Claimant and Mr McDonald on 12 January 2016.

243 Does the Tribunal consider it just and equitable to extend time limits for the claims the Tribunal has upheld in section A of the list of issues? The Tribunal finds and concludes that it would not be just and equitable to do so including because:-

243.1 Out starting position is that statutory time limits are meant to be obeyed.

243.2 The delay is a lengthy one, with the last of the allegations being about one year before the time limit.

243.3 The evidence is affected by the delay because the Tribunal is dealing with words used and there was no contemporaneous documentation concerning them because the Claimant did not complain about most of these issues at or near the time concerned.

243.4 The Claimant did not complain about most of them in the complaints she made to Mr Falkingham, Mr McDonald or Mr Aldred.

243.5 The Tribunal considers that there is prejudice to one part or the other depending on which decision we make. If refusing to extend time the Claimant loses what would otherwise be successful claims. Nonetheless, she derives some benefit from our decisions as they demonstrate discriminatory attitudes on the Respondent's part. She has also succeeded on other aspects of her claim which are either in time or time limits are extended by the Tribunal (as we explore below).

243.6 So far as the Respondent is concerned we accept that they have some prejudice in the evidence they have been able to provide having less cogency because of the delay in the Respondent first becoming aware of the issues and they have been less well able to defend these claims.

244 The Tribunal has, next, considered the issue set out in section B, namely the treatment towards the Claimant from Joanne Farmer and Jason Falkingham.

245 Complaints B(i)-(vi) have succeeded, whereas (vii) to (xi) have failed. The successful complaints concern treatment from the two managers concerned from about April 2013 to about September 2015. They amount to acts extending over a period at least until the time that Mr Falkingham ought reasonably to have dealt with the concerns and complaints raised by the Claimant at her meetings with him on 27 August and 1 September 2015.

246 Arguably, the complaints amount to an act extending over a period beyond this date. Ms Farmer did not apologise to the Claimant over her comments about her being South African and direct and using this as part of her justification for telling the Claimant

that she would be put on a performance improvement plan and subsequently putting her on an action plan. Mr Falkingham never addressed the Claimant's complaints. Ms Farmer and Mr Falkingham's comments to Mr Aldred were indicative of a discriminatory attitude towards the Claimant. They were responsible for an ongoing state of affairs, the wording referred to in the *Hendricks* case.

247 If the complaints are out of time the Tribunal extends time limits:-

247.1 As referred to above our starting point is that statutory time limits are meant to be obeyed.

247.2 If out of time, they are a few months out of time and less out of time than the matters referred to under the list of issues in section A.

247.3 The Claimant's reasons for not bringing her claim earlier included having been a loyal Barclays employee for many years, wanting to make a success of her role, wanting to get on well with her colleagues and Ms Farmer and not to be labelled a trouble-maker. These are all valid reasons for not wishing to bring proceedings. Bringing complaints against one's colleagues and managers is stressful and it is readily understandable that the Claimant would be hesitant in doing so.

247.4 The Respondent was at fault in the delays in the sense that some of the complaints the Claimant was making to Mr Falkingham and Mr McDonald (and subsequently Mr Aldred) under the Respondent's procedures for complaints and grievances were not acted upon. The Claimant's complaints about race discrimination were ignored. Her complaint about Ms Balster was ignored.

247.5 The Claimant attempted to deal with these complaints internally. This is a strong point in the Claimant's favour. Successive governments have wanted Employment Tribunal procedures to come only after the parties have attempted to resolve disputes without litigation.

247.6 So far as prejudice is concerned the prejudice to the Claimant if we refuse to extend time limits outweighs that to the Respondent if we extend time limits.

247.7 If refusing to extend time limits the Claimant would lose what would otherwise be successful claims.

247.8 On the Respondent's part the issues concerned are well documented, the Respondent's witnesses were able to give evidence and we do not consider that the cogency of evidence was greatly affected.

247.9 If the Respondent's defence to these claims of race discrimination is well-founded (as to some extent we found them to have been) they would ultimately succeed in resisting the complaints.

248 The Tribunal has next considered the issues in section C of the list of issues.

249 The first of these issues involves Mr Falkingham's failure to address the Claimant's complaint about Joanne Farmer's discriminatory remarks adequately at the informal meetings on 27 August and 1 September 2015.

250 For similar reasons as those given for extending time limits under section B of the list of issues we extend the time limits on this complaint. The second issue involves Mr McDonald.

251 The Tribunal considers this issue to be an act extending over a period until Mr McDonald notified the Claimant of the outcome of her grievance at the outcome meeting on 18 February 2016. This complaint is in time.

Remedy hearing

252 As the Claimant has succeeded in part in her case a remedy hearing will be required unless the parties are able to settle remedy themselves.

253 The parties' representatives indicated that remedy issues might be complex and that a Preliminary Hearing would be helpful if the Claimant were to be successful in her case.

254 The case is listed, therefore, for a Preliminary Hearing (closed) for two hours on Friday 8 September 2017 in order to consider the remedy issues and make, if required, Case Management Orders. If the parties consider that a Preliminary Hearing is not required, they may contact the Tribunal with an application to vacate the date, giving details of the case management preparations they have made; and the length of time needed for the remedy hearing (including time for the Tribunal to deliberate and deliver judgment). The parties may also wish to consider, as the Claimant has issued a new claim, whether the cases would be suitable for an application to be made for judicial mediation. If so it would be helpful if a joint application were to be made to the Tribunal; and, if not, the parties representatives have made sure that they have taken their client's instructions on judicial mediation before the Preliminary Hearing that has been listed to consider remedy.

Employment Judge Goodrich

3rd August 2017