



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss G Okwu

**Respondent:** The Tavistock and Portman NHS Foundation Trust

**Heard at:** London Central (by Cloud Video Platform)

**On:** 15, 16, 17,

20 and 21 May and 8 and 9 July 2024

**Before:** Employment Judge Joffe  
Mr A Adolphus  
Ms S Aslett

## Appearances

For the claimant: represented herself

For the respondent: Mr S Nicholls, counsel

## JUDGMENT

1. The complaints of direct race discrimination are not well-founded and are dismissed.
2. The complaints of harassment related to race are not well-founded and are dismissed.
3. The complaints of victimisation are not well-founded and are dismissed.

## REASONS

### Claims and Issues

1. The issues in the claims were agreed at a case management preliminary hearing in front of Employment Judge Adkin on 14 September 2023.
2. They were as follows:

Race

1. The Claimant is a black person of African origin.

Direct discrimination (s.13 EqA 2010) –

2. What are the facts in relation to the following allegations:
  - a. Sandra Marinou not allocating new work to the Claimant for almost 2 months after the Claimant started employment (later in December 2019 or January 2020);
  - b. Not having a monthly supervision (the Claimant asserts her last supervision was 27.10.2022) (between October 2022 – July 2023);
  - c. On 24.04.2023, C was not paid her salary, nobody else in the teams had the same issue (same thing happened in Summer of 2022, which relies as background to demonstrate that this was because of her race);
  - d. On 24.03.2023 at a team meeting, colleague Dr Mike Shaw (Consultant Psychiatrist) made a racist joke about African monkeys how they "were bad and very wicked and they throw poo at people" and everyone laughed. (C states she reported this to Dayo Ajibola (Associate Director HR), Tim Kent (Associate Director) and Micheal Holland (Chief Executive Officer)) The Claimant draws an inference that this was because of race because the previous conversation had related to serious work matters and this comment came out of nowhere.
  - e. Around 15 July 2021, Sandra Marinou and Jane Penfold demanded the Claimant's Occupational Health records for no reason and without her knowledge.
  - f. R took 2 years to arrange for C to have a tuberculosis vaccination. C's first contact with Occupational Health was on 10 January 2020 and she alleges she wasn't provided the vaccinations until 6 February 2022.
  - g. Approximately, between November 2022 and 1 April 2023, Tim Kent called me to ask 'what my role would be in the team going forward' and started the meeting by saying 'look, I want to tell you about myself. I was adopted. I am a mixture of Lebanese and [another race]' [The Claimant cannot recall but it may have been white, white British or white other.] "I started working with the adoption and fostering department at Hackney Council but had to leave because it was too close to home". C alleges that Tim Kent was suggesting that C was a former terrorist and she can see herself in service users.
3. If disputed, did the Claimant reasonably see the treatment as a detriment?
4. If so, has the Claimant proven facts from which the ET could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances not of the same race was or would have been treated?

5. Claimant confirmed that she is relying upon actual comparators, being all other team members within The Returning Families Unit whose race is 'White' or 'White Other'.

6. If so, has the Claimant also proven facts from which the ET could conclude that the less favourable treatment was because of race?

7. If so, has the R shown that there was no less favourable treatment because of race?

Harassment (s.26 Equality Act 2010)

8. Did the R engage in unwanted conduct related to the protected characteristic of race?

9. The unwanted conduct related to race complained of is:

a. On 24.03.2023 at a team meeting, colleague Dr Mike Shaw (Consultant Psychiatrist) made a racist joke about African monkeys how they "were bad and very wicked and they throw poo at people" and everyone laughed. (C states she reported this to Dayo Ajibola (Associate Director HR), Tim Kent (Associate Director) and Micheal Holland (Chief Executive Officer)) The Claimant draws an inference that this was because of race because the previous conversation had related to serious work matters and this comment came out of nowhere.

b. Around 15 July 2021, Sandra Marinou and Jane Penfold demanded the Claimant's Occupational Health records for no reason and without her knowledge.

c. R took 2 years to arrange for C to have a tuberculosis vaccination. C's first contact with Occupational Health was on 10 January 2020 and she alleges she wasn't provided the vaccinations until 6 February 2022.

10. If so, did such conduct have the purpose or effect of violating the C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the C? C to particularise if she asserts that the conduct had the purpose or effect.

11. In deciding whether the unwanted conduct has such effect (in the paragraph above), the ET will have regard to:

i.the perception of the C;

ii.the other circumstances of the case;

iii. whether it is reasonable for the conduct to have that effect.

Victimisation (s.27 Equality Act 2010)

12. The Protected Acts that the Claimant relies upon are the grievances on 18 March 2021, 2 November 2022, 3 November 2022 and in May 2023.

13. Are these protected acts (i.e. do they raise allegations of discrimination, harassment, etc)

14. Did the R subject the Claimant to any detriment because of the Protected Act?

15. The detriments that the Claimant asserts are:

- a. Any reference to racism was removed from the description of C's grievance dated 18 March 2021;
- b. 02.02.2023 the Claimant submitted a Subject Access Request that was not responded to at the time of presenting the ET1 Claim Form;
- c. On 05.05.2023 the Claimant had a meeting with Hulya Karabulut and Tim Kent (with Dayo Ajibola (Associate Director HR) as an observer) to answer "trumped up charges";
- d. Around 15 July 2021, Sandra Marinou and Jane Penfold demanded the Claimant's Occupational Health records for no reason and without her knowledge.
- e. R took 2 years to arrange for C to have a tuberculosis vaccination. C's first contact with Occupational Health was on 10 January 2020 and she alleges she wasn't provided the vaccinations until 6 February 2022.
- f. Failure to deal with grievances submitted on 18 March 2021, 2 November 2022 and 3 November 2022 and in May 2023.
- g. Hulya Karabulut and Sandra Marinou deliberately failed to complete change forms and this resulted in discrepancies in C's pay in July 2022 - September 2022.

Jurisdiction - Time limit (s.123 Equality Act 2010)

16. Are the C's claims of race discrimination in time such that the ET has jurisdiction to consider any of them? This will involve considering:

- a. Were these claims presented within three months of the acts complained of in accordance with section 123(1) Equality Act 2010 (taking into account the EC period)?
- b. If any act took place more than three months less one day of the date on which the claim was presented to the Tribunal, does it form part of conduct extending over a period within the meaning of section 123(3) Equality Act 2010?
- c. If the ET finds that any act complained of was not part of conduct extending over a period (and was brought outside the primary limitation period), is it just and equitable for the ET to exercise its discretion and extend the time limit for submission of those claims, in accordance with section 123(1)(b) Equality Act 2010?

## **Findings of fact**

### The hearing

3. We had an electronic bundle of 1526 pages. We read those documents we were taken to.

4. The claimant produced a witness statement and gave live evidence on her own behalf.
5. We received witness statements and heard from the following witnesses for the respondent:
  - Ms S Marinou, clinical service manager;
  - Ms J Penfold, CAMHS practitioner;
  - Dr M Shaw, consultant child psychiatrist;
  - Ms H Karabulut, adolescent psychotherapist;
  - Mr D Ajibola, associate director of people;
  - Ms K Merchant, head of people;
  - Mr T Kent, director of complex mental health.

#### Procedural matters

6. The claimant raised concerns that documents she had disclosed had not been included in the bundle. A difficulty was that she said she had sent the only copy of those documents to the respondent by way of disclosure. The respondent arranged to have copies of the claimant's disclosure sent to her in hard copy for the second day of the hearing. The claimant told us that these were not all of her documents but she was not able to identify what was missing.
7. On a number of occasions the Tribunal explained to the claimant that if she looked for documents she considered were missing, for example in her work emails, these would be admitted late if it was appropriate to do so. The claimant ultimately did not produce any more documents.

#### Facts

8. On 19 November 2019, the claimant started employment with the respondent as a family support worker in the Returning Families Unit; this was a part time role. She has a background as a qualified social worker but told the Tribunal she had lost her registration. She was over qualified for the family support worker role.
9. The Returning Families Unit provided children and families returning from Syria who have had what Mr Kent described as an 'alleged involvement with alleged terrorism' with clinical intervention and a support network to assist their return to the UK. The Unit works with local authorities and the network around the returnees. It is commissioned by the Home Office to do this work.

10. The family support worker role involved supporting social integration of families on their return; that included support in relation to housing, finance and school applications and providing sessions for parents to enhance their understanding of children's needs. Family support workers would be invited to meetings with local authorities and other agencies where necessary and appropriate.
11. There was a dispute between the claimant and the respondent about aspects of the role; the claimant said that she was not employed to provide practical support to the returnees such as support with housing issues. Ultimately we did not find this dispute was material to the issues we had to decide.
12. In December 2019, shortly after the claimant commenced employment, Ms Marinou became the clinical service manager for the Returning Families Unit, alongside another role she was performing in the Trust. She became full time in the Returning Families role a year later.
13. The composition of the Returning Families Unit changed over time. It generally comprised 7 – 8 people, which included a consultant child psychiatrist, Children and Adolescent Mental Health Service clinicians, a systemic psychotherapist / senior practitioner, a family support worker, an administrator and a clinical service manager. Supervision was provided to everyone in the team, some roles require more than others. For non clinical roles: supervision takes place once a month in order to provide general support not specific to clinical cases. Everyone has group supervision once a month to discuss clinical cases: this is a session guided by Ms J Wakelyn who is external to team and has been providing supervision since 2019.
14. One of the claimant's allegations is that she was not allocated work for two months after she started employment.
15. Ms Marinou's evidence was that the team did not have an allocated base at that point and she was focusing on acquiring permanent office space and equipment. She was ensuring that team members had accounts set up to access the respondent's IT systems. It was a difficult time for Ms Marinou working between two services and familiarising herself with the Returning Families Unit service. At this point, the majority of clinical staff who had worked on previous cases had left the service.
16. The claimant said that when she joined the service, there was an allocated base and a fully functioning office but she accepted that as new people joined, the office moved as the room the team was in was not big enough.
17. Ms Marinou said that the team was frustrated about the difficulties described and the fact that there was only a small case load of three cases, two of which were inactive. This resulted in a lack of substantive work for staff initially. Dr Shaw also recalled that there was limited work at this point. Ms Marinou said that she did not recall the claimant raising an issue with her about the allocation of work.

18. Ms Marinou said that the claimant was offered induction and training during this period and assigned tasks designed to assist with her work – including reviewing relevant literature and preparing resources for play and education to be used with families.
19. Ms Marinou gave some general evidence about how work was allocated in the team. Work was allocated according to the clinical needs of the particular family and the expertise of the practitioner. Work allocation was discussed in team meetings. There were four types of work performed by the team:
  - a. Individual work including assessment and psychotherapy services for children and support to parents/carers;
  - b. Child intervention, including observations;
  - c. Consultations with educational authorities including observations of children in the school or nursery setting;
  - d. Supporting families' integration into local communities, including support for housing applications and access to financial support.
20. The claimant's evidence about available work was partly based on matters she said had been relayed to her by Ms C Fitzsimmons, who appears to have been one of the few clinicians who had not left the service at the point when the claimant joined. The claimant's evidence was that Ms Fitzsimmons told her that there were eight families and 16 children being looked after by the service. Ms Marinou's evidence was that these were the cases which had previously been open not those which were active at the time the claimant joined the service.
21. The claimant did not send any email at the time saying she did not have enough work or asking for more work. She told the Tribunal that she did not think she would have sent one as she was new in the job.
22. The claimant said that she was not allocated any substantive work until 18 December 2019. It appeared from contemporaneous documentation that the claimant was allocated work with a family some time around mid December 2019.

### *The TB issue*

23. In December 2019, there was a new case: RF0101. This was initially allocated to a number of team members including the claimant. The children of the family had TB and one had hepatitis B. They were referred for treatment. The respondent was told that the children were not infectious to professionals visiting as they were not symptomatic.

24. On 8 January 2020, the claimant raised by email to Ms Marinou and others, including her supervisor, Ms Maunder, a concern about the children having TB and hepatitis B as she was not immunised against those diseases.
25. Ms Marinou said in evidence that the claimant agreed it was appropriate to allocate this case to her supervisor Ms Maunder due to unresolved issues about the claimant's vaccination status.
26. Ms Marinou told the Tribunal that she was guided by her manager, Mr S Bambrough, to ensure staff that staff were checked by occupational health to see if there was any risk of exposure. There was a process for staff to book an appointment with OH to undertake a risk assessment.
27. Ms Marinou asked OH to prioritise the claimant's appointment as the issue was affecting her ability to work with the family. After the claimant had her appointment, she told Ms Marinou that OH had not given her the test required for TB and had advised her to get it from her GP. The claimant's GP in turn had said that it was the Trust's responsibility to provide the test.
28. On 13 February 2020, Ms Marinou asked OH by email when the claimant could be tested for TB and whether the service needed to cover the cost of the test. She said that the test had been outstanding for some time and had been escalated to the clinical director of the Trust.
29. Confusingly, in the light of subsequent events, OH told Ms Marinou that the claimant had been 'assessed' for TB immunity on 29 January 2020 and that they had evidence of vaccination. Ms Marinou asked OH to confirm the outcome of the 'test' with the claimant.
30. On 19 February 2020, the claimant emailed OH saying that she was told that she had not been checked for TB immunity and that she had been told she would need to ask her GP about the matter. We note that there was clearly a difference between an 'assessment' and actual test for TB immunity, which had not been performed.
31. It appears that at some point there was a discussion between the claimant and Ms Marinou about the testing being done privately but Ms Marinou said that would present problems for the Trust's insurance.
32. In March 2020, the first covid lockdown occurred and the claimant's work, like that of others, became entirely remote.
33. In terms of allocation of work to the claimant over the period of her employment, Ms Marinou said that she had not been able to be allocated observation work as that took place in a face-to-face setting, and the claimant had been working remotely due to an ongoing concern about exposure to covid. She said that the work the claimant had been doing included:



- a. Providing a package of support and putting together a list of resources to support families integration;
  - b. Taking part in a multidisciplinary assessment;
  - c. Parenting interventions;
  - d. Meetings with local authorities and other professionals;
  - e. Contributing to a paper on an intervention she delivered with a family remotely.
34. The claimant's TB vaccination status understandably became of less immediate significance once all of the team was working remotely.
35. On 2 April 2020, OH wrote to the claimant and Ms Marinou saying that due to the pandemic, there were limited Mantoux (TB) clinics .They suggested that a risk assessment be carried out and that the claimant would be offered an appointment at the next available Mantoux clinic.
36. On 9 March 2021, the claimant emailed HR to make a "formal complaint about racist treatment" ,and asking 'Where do I begin?'. On 18 March she submitted a formal grievance against Ms Marinou: 'Please accept this as a formal complaint of the racial treatment I have been subjected to by Sandra Marinou the office manager.' The complaints included (but were not limited to) complaints about the lack of allocation of work for the first two months of her employment, the problem with the TB testing and complaints about Ms Marinou's involvement in the claimant's work with a particular family. She said that Ms Marinou interrupted or hurried her at team meetings and never listened to her. There was also a complaint that during a discussion about a different member of staff referring to the 'n word' at a meeting, Ms Marinou had said: 'Gloria, you are not the only ethnic minority in this team.'
37. On 24 March 2021, the claimant met with Ms J Brown to discuss her grievance.
38. On 7 April 2021, the claimant was told that Mr W Fitzmaurice, operations direct DET, had been commissioned to investigate her complaint. Ms Brown had drafted formal terms of reference. On 16 April 2021, the claimant and Mr Fitzmaurice met for an investigation meeting. On 29 April 2021, Mr Fitzmaurice met with Ms Maunder. On 30 April 2021, Mr Fitzmaurice had investigation meetings with Ms Penfold and Ms Bailey and on 4 May 2021, he met with Dr Shaw. He met with Mr Bambrough on 7 May 2021 and Ms Fitzsimons on 13 May 2021.
39. On 20 May 2021, Ms Marinou was interviewed by Mr Fitzmaurice and sent Mr Fitzmaurice notes on the claimant's complaints to add to her interview notes. We note that she responded in detail to the specific complaints made.
40. On 21 May 2021, Mr Fitzmaurice met with another team member, Mr G Harmon.
41. We note that the claimant expressed disagreement with the notes of her meeting which were sent to her to amend and comment on but she declined

to amend them or to provide a recording she said she had made of the meeting.

42. On 20 May 2021, she wrote: *As I refuse to share the tape, I would ask that my initial letter replace this report. If that it is not possible, I am afraid I will not be party to the whole thing anymore. I have been failed yet again.*
43. In approximately July 2021, Ms Maunder started maternity leave and Ms Penfold, a senior clinician in the team was allocated to be the claimant's new supervisor.
44. Around this time Ms Marinou had a meeting with Ms Penfold and explained about the TB vaccination issue, that it had been escalated and remained unresolved. She suggested that Ms Penfold speak with HR to get guidance about what types of work the claimant could be allocated based on her OH assessment. Ms Penfold contacted HR and was provided with a report showing the claimant was cleared for illnesses, she believed including TB.
45. Ms Penfold sent this to the claimant on 15 July 2021, saying that it appeared the claimant had 'been cleared' and 'it seems there is no risk of catching TB from this'.
46. The claimant replied to Ms Penfold that day saying that she had not been checked for TB.
47. The report we saw entitled 'Medical certificate of fitness to work' contained the claimant's date of birth and stated 'Fit for contracted duties, no adjustments likely to be required'. It was dated 24 October 2019 and was clearly a pre-employment check. Ms Penfold told the Tribunal that she had had blood tests and brought health records showing vaccination / childhood illnesses when she herself commenced employment. She appears to have read into the very limited report she received that the claimant was clear for various illnesses.
48. We could well understand that the claimant would have been annoyed to be told she was clear for TB when she knew she had not been tested. Her complaint to the tribunal was about Ms Penfold accessing OH records.
49. The claimant was asked in evidence what was personal about the record and she said it was her date of birth; she was a very private person and did not want Ms Penfold to see that. She accepted that there was no confidential health information in the record.
50. She said of Ms Penfold's action in contacting HR, that when someone explains something to you what happened and the person making the enquiry checks with someone else, it is because they do not believe you. She said that she explained three times about the TB jab and then Ms Penfold went and checked with HR. She said that HR did not know more than she did and that it was 'malicious' of Ms Penfold to contact HR. She said that Ms Marinou

could have clarified the situation for Ms Penfold but that Ms Marinou was seeking to get back at the claimant for complaining about her.

51. Ms Penfold said in evidence that she did not realize there was an issue with her seeing the records at the time and that she had been following management advice. She would have expected HR to flag it if it was a problem. Ms Penfold suggested that the claimant have another OH appointment but the claimant initially said that she had lost confidence in OH.
52. The claimant subsequently did attend an appointment but there was no one there when she arrived. The situation was undoubtedly frustrating for the claimant.
53. On 21 July 2021, after some further correspondence with the claimant, Ms Penfold emailed Mr Bambrough: they agreed that the claimant could contact Mr Bambrough directly to try to resolve situation.
54. Ms Penfold told the Tribunal that she felt her attempts to help the claimant had made the claimant angry. She said that she found it difficult to manage the claimant as she was often hostile in her communications. She felt the way the claimant communicated was not appropriate or professional at times.
55. Ms Penfold said that, as to allocation of work, this was largely done by Ms Marinou but she would discuss the claimant's capacity with her. She said that on a couple of occasions when she asked the claimant about getting involved with new work, the claimant said that she had enough on.
56. On 11 August 2021, the claimant was sent the outcome of the investigation into her grievance by Mr C Smith in HR. The complaints were not upheld but recommendations were made to address issues such as how best to discuss issues of diversity and difference, possible management intervention for Ms Marinou and the claimant (which appeared to be some sort of mediation) and a request for a firm procedure from OH to guide staff working with clients with TB. The detailed report was attached to the email. The claimant responded by saying that she had "permanently deleted the investigation report" without reading it as she had already told Mr Smith that she did not want the outcome as she had removed herself from the process 'for my health and sanity'.<sup>1</sup>

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<sup>1</sup> So far as the TB issue was concerned, the findings were:

27. From reading the case notes, Ms Okwu noted that a child may pose a risk to others of infection to TB. When querying with the Occupational Health service, Ms Okwu was advised it would not be possible to have her own immunity to TB tested, other than by looking for visual evidence of a likely TB jab scar on her arm [Appendix D, p52]. At this point, Ms Okwu raised her concerns with her line manager, Ellen Maunder, copying in Ms Marinou on the email [App. B (i)].

28. In discussion with Ms Okwu, Ms Maunder suggested that Ms Okwu might make arrangements for an immunity test to be carried out privately. This was suggested to Ms Marinou, who advised that a private test would not be possible due to the Trust's insurance. Ms Okwu's recollection is that this was stated directly by Ms Marinou during the discussion with Ms Maunder. Ms Marinou recalls raising this question with her own line manager, Mr Bambrough [Appendix D, p57].

57. On 1 December 2021, Ms Penfold emailed Ms Marinou saying that the claimant had said that she did not want to be supervised by Ms Penfold any more. Ms Marinou wrote to Mr Bambrough asking for advice on how to deal with the situation. Mr Bambrough in turn sought HR advice
58. On 9 December 2021, Ms Penfold wrote to Mr Bambrough and Mr Cavanagh to say that the claimant had been sending inappropriate emails to the team and that the claimant had hung up on her when she tried to discuss the emails with her.
59. On 10 December 2021, there was a meeting between the claimant, Ms Penfold and Ms Marinou about the issues which had arisen. The claimant raised a number of complaints about Ms Penfold and it appears from the notes that efforts were made to resolve the issues which had arisen.
60. On 13 December 2021, Ms Marinou updated Mr Cavanagh and Mr Bambrough on the meeting of 10 December 2021 and asked for Mr Cavanagh's help in getting the claimant's OH assessment prioritised.
61. On 16 December 2021, Ms Penfold wrote to Mr Bambrough to give her view of the meeting which had occurred and to share some further emails which had been sent which she considered showed 'how impossible it is to manage Gloria'.
62. On 23 December 2021, Mr Bambrough and Mr Cavanagh met with the claimant and they discussed the problems with OH and the claimant's TB test. Mr Cavanagh agreed to take this up with OH directly. They arranged to meet in January 2022 to address issues between the claimant and her supervisors.
63. During January 2022, Mr Cavanagh was in contact with the claimant about the TB tests. The claimant had appointments for the Mantoux test booked. By 1 February 2022, she had received her BCG injection as it appeared from the tests that she was not immune to TB.

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29. Ms Okwu states that she felt 'degraded and dehumanised' by the management decision that an insurance policy was 'more important than my life' [Appendix A, p7]. Ms Marinou attempted to explain to Ms Okwu that the Trust has a duty of care to its own staff, and they would not be covered by the Trust's insurance had Ms Okwu attended a private medical appointment and something had happened to her [Appendix D, p52] 30. In her interview, Ms Okwu recalled Ms Marinou asking her for a chronology of what happened with Occupational Health, so that Ms Marinou could try to provide some help. Ms Okwu stated that she provided this information to Ms Marinou, but 'nothing happened' [Appendix B(i), p12]. 31. In her interview and written statement, Ms Marinou was able to provide evidence of attempts she had made to try to resolve the problems, with emails from Ms Marinou to OH and a meeting in March 2020 [Appendix B (ix) p39, Appendix D p50-52]. On 2nd April 2020, the OH team provided an email to Ms Okwu and Ms Marinou explaining their updated protocols for checking TB immunity during the COVID pandemic [Appendix D p 52].

64. In April 2022, the claimant's fixed term contract was due for renewal. It was not renewed at the time although the claimant's employment continued.
65. On 28 April 2022, Ms Karabulut joined the Returning Families Unit. She said that during this period and until early 2023 the respondent was tendering for their work and there was uncertainty as to whether they would retain the contract. Initially the Home Office said that the work would be going elsewhere. It was not until February 2023 that the Home Office confirmed that the work would stay with the respondent. She said that this meant the work of the Unit was more limited during this period. She said that the claimant spoke with her about not being happy as she did not have enough work.
66. In July and August 2022, the claimant was not paid her salary because of the failure to renew her contract.
67. In August 2022, Ms Karabulut became interim service manager when Ms Marinou went on maternity leave.
68. On 25 August 2022, the claimant wrote to Ms Karabulut about lack of work, making an allegation that Ms Marinou had deliberately left her out of case allocations. She said that Ms Marinou 'had this scorched earth policy and toxic otherness towards me'.
69. On 26 August 2022, Ms Karabulut wrote back to say that Ms Maunder would discuss extra work with the claimant and that she would be happy to talk to the claimant herself.
70. Ms Karabulut asked the claimant if she could do observations of children but the claimant said she was exempt from face to face work.
71. In September 2019, the claimant's salary was again not paid. The root of the issue was that a manager had not completed a change form for the claimant. Ms Marinou's evidence was that, prior to going on maternity leave, she was not aware that the claimant's contract was due to be renewed. She said that the Trust was not always effective at alerting service managers that a contract was due for renewal. She said that she was aware of other workers, across different services, experiencing this issue. If it had been brought to her attention she would have ensured the contract change was actioned.
72. At the end of September 2022, Ms Karabulut was asked to complete a change form for the claimant. She said that she tried to clarify with HR and the contracting team that this was the correct thing to do, which caused some delay so that the form was submitted on 10 October 2022 after the payroll cut off date of 5 October 2022. The date for renewal was before she became interim service manager. She said that she relied on HR to alert her to contracts ending and that had not happened in this case.

73. The claimant put to Ms Karabulut that she would have been aware that the contract with the Home Office was due to end in August 2022 but was then extended until March 2023. She said that Ms Karabulut would have been aware that everyone in the team had their contracts ending in August 2022. Ms Karabulut did not agree with that proposition and said that people in the team had different start dates / renewal dates.
74. Ms Karabulut said she was not aware of other contracts ending. She was taken to an email extending Ms Maunder's contract dated 2 August 2022. This was sent from someone in HR, copying in Ms Karabulut and Ms Marinou. Ms Karabulut said that she was relying on HR colleagues to tell her when to complete change forms. If she was informed by HR, she followed the procedure. She thought that would have been via email. She could not remember what proportion of the team required change forms.
75. Ms Karabulut said that she had some discussion about the situation with the claimant in a team meeting, which the claimant felt was a breach of confidentiality. Her intention had been to make the claimant feel supported by saying that Mr Kent was going to resolve the issue. Other members of the team were having issues with salary payments so this was part of a more general discussion.
76. Mr Ajibola told the Tribunal about the process which should have been followed. As part of compliance reporting by HR there would be a run of contract reporting. Any fixed term contracts due to expire should be identified three months ahead of time if possible and a report should be sent to the general manager of each division. If a fixed term contract was due to end and there was no intention to renew, a termination form would have to be completed; if there was an intention to renew, a change form would need to be submitted for the 5<sup>th</sup> of the relevant month. The contract report sent to the general manager might also be sent to the associate director with an expectation that they would inform the service manager.
77. When Mr Ajibola later investigated the issue, he concluded that the change form had not been completed because of miscommunication between management and HR. He said that was quite common at the time; there were gaps in processes and a high turnover of managers. It had happened to other employees; what had happened to the claimant was not typical but nor was it exceptional.
78. Between October 2022 and July 2023, the claimant told the Tribunal that she did not have monthly supervision. The claimant did not consider that Ms Maunder, her supervisor, was racist and the two appear to have had a good relationship.
79. Ms Karabulut told the Tribunal that she spoke to Ms Maunder who said that she supervised the claimant up until February 2023. At the time she spoke to her, Ms Maunder was on maternity leave and unable to access her records.

80. Ms Karabulut said that she spoke to Mr Kent before Ms Maunder went on maternity leave and he agreed to find the claimant an external supervisor as there was no one else in the team who could do it; several members of the small team were on maternity leave. There was a period of three months after Ms Maunder went on maternity leave when the claimant had no supervisor but Mr Kent offered to support the claimant with any queries. It appeared from Ms Karabulut's evidence that there was a delay in addressing the issue because initially they had been seeking someone to cover Ms Maunder's post during her maternity leave. Ms Karabulut had not been part of the search process.
81. On 2 November 2022, the claimant raised issues with payroll about the fact that she had not been paid for two months. She had complained to Mr Bambrough on 27 October 2022 and he had raised the matter urgently with payroll.
82. On 3 November 2022, she raised a grievance with Mr Bambrough about the pay issue:
- I have now been paid. At first I thought there had been an overpayment and that I was paid as a full-timer. So, I contacted payroll. I just got off from the phone to them and apparently there is no mistake. The reason is that it was not 2 months that I have not been paid as I thought, they said it is 3 months. So, I let that sink in - I have been working for 3 months and not being paid? I however, told them to come back to me if they later find out they were wrong.*
- The fall-out from this is that with paying me 3 month's salary in one go I have had to pay almost £1500 in tax and National Insurance. When in a normal month the total is usually approximately £205.*
- As you know, I have written to HR asking for an explanation and so far no response. I have decided to make a formal complaint. I know I am therefore breaking a promise I made to myself never to complain again in this organisation again due to past negative and off-putting experiences.*
- Please, can you tell me the right person to address this formal complaint to. First, I need to know who was responsible for this, how and why it happened? I also want to be put back in the financial situation (tax & NI wise) that I would have been had this not happened. Thanks.*
83. She wrote in similar terms to Ms Karabulut. Ms Karabulut write back that day: *I am sorry to hear that the salary payment has caused stress to you. I will get back to you once I talk to Tim about this. Please feel free to contact me if you could like to talk.*
84. The claimant said that she raised another grievance on 4 November 2022 but the document containing the grievance was never identified in the bundle or produced by the claimant.

85. Some time from November 2022 onwards, there was a discussion between the claimant and Mr Kent about her role in the team. This arose from the claimant expressing unhappiness about allocation of work and the work she had been given to do.
86. On 13 November 2022, Mr Kent contacted Ms Merchant to discuss the claimant's pay issue.
87. On 2 December 2022, Ms C Heneghan in HR wrote to the claimant:  
*Your email complaint has been passed onto me to respond back to you on.*  
*I have looked into your situation and as you see from the attached emails that HR were not notified until after payroll cut off in October that your fixed term contract was being extended to next year. As soon as we received the instruction of change ESR was updated accordingly.*  
*With regards to your Tax & NI this we are unable to change the situation or reimburse as this is governed by the HMRC on what Tax & NI you pay. Now that your pay has been resolved your tax and NI should be adjusted accordingly.*
88. On 4 December 2022, the claimant replied saying that she had been fobbed off, as she had been in respect of earlier complaints:  
*So, I am not surprised.*  
*I have an idea of what happened and your response does not even scratch the surface. That I should accept this and move on when what happened was due to no fault of mine is egregious. That I have lost almost a thousand pounds is simply unacceptable to me especially for an organisation that has abused me for over 3 years.*  
*This is just one of the many abuses, racial and otherwise that I have had to endure just because I had the temerity to apply for a job here. At a point I thought things would improve for me but I was mistaken. I find myself working in a toxic environment, where I encounter micro-aggressive interaction almost on a daily basis. Where I am gaslighted, demeaned and used as the office minion.*  
*I have gone through and am still going through hell in this job and there is a limit to everything. I have reached that limit and it is now time to tell the outside world.*
89. On 5 December 2022: Mr Kent invited the claimant to meet with him about pay issue, her complaint having been sent to him by Ms Karabulut:  
*We haven't met yet but I wanted to introduce myself as the new associate director for Complex Mental Health which incorporates Returning Families. I came to your team meeting last week.*  
*I am sorry to hear about your over payment and subsequent deductions, I can fully understand why you are so frustrated and wanting to resolve it without an adverse impact on your pay. I note that you have other reason for complaint and these sounds ongoing for some time? Would you like to meet me, probably with our HR rep and if you have a union or other representative you*



*might want to include them so that we can try to unpick things a bit and try and find some resolution? I have also asked HR for a payroll contact so that we might get a payroll person to actually talk you through what has happened, why and what remedial action might be possible under the circumstances. Is anyone else in your team (supervisor or line manager closely involved and knows the situation well?).*

90. Mr Kent said that he considered that the claimant had received a factually correct answer from HR about the pay issue but he was aware that the claimant felt that she was being fobbed off and he did not want her to feel that way. He spoke with Ms Maunder to understand background factors to the situation.
91. On 6 December 2022, Ms Heneghan wrote to the claimant answering questions the claimant had raised about who was responsible for the pay issue and being compensated for the deduction of tax and National Insurance. She said: 'Your change form was submitted late (after payroll cut-off) by your line manager. Once submitted was actioned.' And as to the tax and National Insurance issue: 'This a HMRC deduction and not a trust deduction.' She said: 'Within your email response you have made a number of references to your experiences with working within the organize [sic]. If you would like to meet to discuss those with me I am more than happy to this week.'
92. On 15 December 2022, the claimant met with Mr Kent and Ms Heneghan to discuss the pay issue. Mr Kent said that the claimant expressed mistrust of further meetings. He understood that she had mistrust due to past experiences which she felt had not been resolved. They talked about her pay. The claimant wanted to discuss her previous grievance where she felt that she had not had justice. Ms Heneghan explained that those concerns had already been investigated.
93. That same day, the claimant write to complain about Ms Heneghan, saying that she had brought her own agenda to the meeting and tried to hijack it by constantly interrupting the claimant:
- You defended the decision not to uphold my racism complaint so strongly as if you were there.*
- I only did it to have it on record. It was a stitch up right from the beginning. When I saw the way things were going, I recorded one meeting and I was shocked when I compared it to their minutes*
- I stand by the fact that my tormentor had friends in high places in the Tavistock and that is why she was able to get away w[ith] blue murder. She even turned herself into the victim ...Whether you believe it or not the organisation is reeking of racism and calling in an agency to write up a policy about it is just whitewashing it. Perhaps you should look up their history of blatant racist discrimination of their employees...*
94. On 20 December 2022, Ms Stennett (Ms Heneghan's manager) wrote to the claimant to ask her to meet with her about the complaint against Ms

Heneghan. The claimant replied on 21 December 2021 saying that there was no point in having another meeting. Ms Stennett asked the claimant if she wanted to progress the complaint as a formal grievance and, if so, when they could discuss it.

95. On 22 December 2022, the claimant wrote to Ms Stennett saying that she could attend a meeting in the new year. Ms Stennett said she would send an invitation for 5 January 2023. The claimant said that she did not work Mondays and Ms Stennett clarified that 5 January was a Tuesday. The claimant said that she might be taking time off during that period and Ms Stennett asked if she could confirm her availability for the weeks commencing 2 and 9 January 2023.
96. The claimant then asked Ms Stennett to stop harassing her with email. She would contact her in new year with a suitable date and time. Ms Stennett said that she would have to arrange a meeting by 15 January latest or she would close the case.
97. The claimant then sent an email to Mr Holland, the respondent's CEO, complaining about Ms Stennett threatening to close the case. Mr Holland replied that he was sorry she felt harassed. He hoped that a time could be arranged to deal with her complaints.
98. Mr Holland subsequently (in February 2023) asked Mr Ajibola to investigate the issues the claimant raised. Mr Ajibola started his role with the respondent on 28 January 2023.
99. On 8 January 2023, Mr Kent wrote to the claimant to see if her tax and NI had been sorted out and whether the claimant wanted to meet with him and Ms Stennett.
100. The advice the respondent had received from payroll was that there was nothing wrong with the pay calculations; the tax and NI deducted should be adjusted by HMRC.
101. The claimant wrote back to say that tax and NI had not been sorted out:  
*There were no adjustments in my pay unfortunately. To be honest with you, I am not fighting this pay issue because I am desperate for money. I make enough money from my self-employment that the income from the Tavistock is just pocket money for my children. If I depended on it, I would have noticed that I had not been paid for one month, how much more 3 months.*
102. The claimant told the Tribunal that what she said in the email about not needing the money was not true. It appeared that she was saying she had written the email in that way out of pride. She wrote in further information for these proceedings:  
*Not paying me for 3 consecutive months in July August September 2022 was a minor administrative error to the Respondent. However, it was a major thing for me as it resulted in many defaults resulting in a damaged credit file that*

*will last 6 years, mortgage arrears, numerous threatening letters due to non payment of bills.*

....

*After the two salary incidents. Tim and Hulya seem to be obsessed with how it affected me. They wanted to know so as to feed their gloating. Tim even invited me to a meeting to tell him, It was weird so I told Tim it did not affect me one bit because I had another job. The disappointment on his face was clearly evident.*

103. On 31 January 2023, Ms Stennett wrote to the claimant saying that she would close the complaint if the claimant did not meet with her:

*I do hope we can arrange a time that suits you in the very near future to meet with me so that your complaint can be dealt with. Understandably, the colleague who you have named within your complaint they would also like to seek a resolution as soon as possible.*

*Could I suggest that we schedule a meeting by 8th February 2023? Otherwise, I will consider this matter is closed and your complaint is withdrawn.*

104. On 1 February 2023, the claimant wrote to Ms Stennett and asked if the letter was a joke as they had had a meeting and discussed pay slips and Ms Stennett had said she would email for more details. It appeared to the Tribunal that that had been a meeting to further explore the pay issue, not a meeting about the complaint against Ms Heneghan.

105. Ms Stennett wrote back asking the claimant not to use inflammatory language and exclamation marks as that was considered shouting. She said that they had had an informal meeting about the pay issue but she was wondering if the claimant was seeking to pursue a grievance against Ms Heneghan.

106. The claimant then wrote:

*I make no apologies for whatever language you say I used in my last email! As usual you have now lied about what you said at the last meeting. We were not alone! While viewing my payslips you kept on taking about deductions for a loan - you said this several times. I responded several times that there was no such deduction on my payslip as I have never taken a loan from the Tavistock!! You clearly stated that you will contact me for more information. You want respect? Respect begets respect!!! Looking at the emails you sent me before Christmas, you have no respect for me so why should I respect you!!!!!!!!!!*

107. Ms Stennett then escalated the matter to Ms Merchant who was in correspondence with Mr Kent about how to deal with the issue.

108. On 2 February 2023, the claimant submitted a DSAR via a general HR inbox.

109. On 13 February 2023, Ms Karabulut sent an email to the claimant, apologising for the situation with late payment and the discussion about it in a team meeting:

*I hope this e-mail finds you well. I am sorry that you have experienced stress and financial difficulties due to your fixed term contract not being renewed on time. I write to advise that at the end of September 2022 I was advised that your fixed term contract was terminated in August. I then clarified this with HR and finance and then submitted the change of contract form to extend your fixed term contract until 31.03.2023. However, this was done later than the payroll's submission date, which caused a further delay in payment. I am unable to know whose contract needs to be renewed unless I receive a notification from either the Finance Department or HR, nevertheless, I am sorry for the hardship this has caused you.*

*Regarding the discussion in the team meeting in respect to employment contracts. My intention was to have a general discussion about possible payment and employment contract issues. You may remember that some other team members also had similar issues with salary payments. Nevertheless, I should not have talked about your personal difficulties in the meeting and I am sorry for that. I hope the explanation above answers some of your questions but I am happy to discuss these further if you have any other questions. Please let me know if you want to meet to discuss this matter further.*

110. It was some time around this time that Mr Ajibola, who had started in post as associate director of people, was asked by Mr Holland to look into the issues raised by the claimant and provide him with a summary of the issues. It was unclear to the Tribunal what the ultimate purpose of that activity was.
111. On 14 February 2023, Mr Ajibola wrote in response to the claimant's letter to Mr Holland on 22 December 2022. He apologised for how the case had been managed and asked what outcome she was seeking. He asked whether she would like to meet and there was an email discussion about meeting the following week.
112. On 15 February 2023, the claimant wrote to Ms Karabulut not accepting her explanations. She said that she had not been caused any financial difficulties.  
*There are just a number of things that happened that lead me to think that this was not a mistake. You renewed Ellens' contract on the 1st of August 2022, why was mine not renewed at the same time? We are a very small team, and you knew that the contract was terminating on the 31st of March. You also knew that I have been in the team for a long time and would be affected. If as you claim that nobody told you, why did you not ask as I would have thought that this is part of the Managers role. You only sent the change form to Shamim and Christian on the 10/10/22 - this was two months too late.*
113. On 22 February 2022, there was a meeting between the claimant and Mr Ajibola.
114. Mr Ajibola then prepared a report on what appeared to him to be the issues raised by the claimant.

115. In March 2023, Ms Maunder, the claimant's supervisor, started maternity leave. The parties agree that the claimant did not have supervisions for several months after that.
116. On 10 March 2023, the claimant sent an email to Mr Kent about reallocation of work on her supervisor going on maternity leave; she said that that she had been left out. This follows on from correspondence with Ms Karabulut about the same issue. Ms Karabulut considered that the discussion had been about allocating care coordinators, who were clinicians and other senior staff; the claimant believed it was about reallocating other work Ms Maunder performed.
117. Mr Kent invited the claimant to a meeting at which he made remarks about which the claimant makes complaints. The invitation email sent on 19 March 2023 said:
- Thanks for your message.*
- I wonder if the best way to negotiate and think through this situation would be a mediated meeting with Hulya and myself, perhaps Dayo could join us if you both think helpful to have someone slightly outside of our service to observe and comment if needed.*
118. Mr Kent said that he wondered if the claimant was working at below the level of her capability as she appeared to have more experience and qualifications than were required for her role. He told the Tribunal that he wanted to understand what could be done to support the claimant and help her to feel happy in her role.
119. He said that he shared some of his own personal history to engender trust. He wanted to understand what it was about the work which bound her to working with these particular children. He suggested that the claimant do some observations of children; she said that she was not paid to do that; she was exempt from face-to-face work. Mr Kent believed it was a suitable task for someone in the claimant's role.
120. Mr Kent said that during the discussion there was some reference to the claimant coming across an area of conflict in her life experience. He said that he took from that that there might be a part of the claimant which felt very passionate or emotionally connected to the experience of the children. He said that was not uncommon for people working in social care. He said that he did not suggest or himself infer that the claimant had any connection to terrorism. He shared some of his own personal history with the claimant in relation to why he had entered social work and his connection with the people they worked with.
121. On 14 March 2023, Mr Ajibola updated the claimant as to when his report would be ready.
122. On 21 March 2023, Mr Ajibola sent the claimant a draft of his email reporting to Mr Holland. The email opened:

*I write further to my meeting with Gloria Okwu on 22nd February 2023 to provide you with a written summary of the points covered during our discussion. I have provided in this email, the concerns raised by Gloria regarding how she was treated her previous manager and most recently, her current line manager. Gloria confirmed during our meeting that her ill-treatment has been consistent throughout the entirety of her employment with the Trust. As agreed with Gloria, I have themed the points raised by Gloria under the subheadings below:*

- Breach of Confidentiality.*
- Failure in duty of care.*
- Injuries to feeling and financial challenges.*

*For context, Gloria explained to me that she has made several complaints regarding the abuse she suffered within her department and none of these complaints were investigated fairly. Gloria explained that her complaint did not address the racist abuse she suffered and only addressed the bullying & harassment complaint she raised. Gloria explained to me that attempts were made to deliberately misinterpret the statements she made during the investigation into the bullying & harassment complaint. Gloria affirmed that she made it very clear that the statements that were attributed to her were incorrect. Gloria confirmed that these actions doubtful of the investigation proceedings and she was not confident a 'just' outcome would be reached – in Gloria's opinion this was not reached as the outcome of the investigation was 'no case' to answer.*

123. On 24 March 2023, a team meeting took place at which the claimant alleged that racist remarks were made about monkeys by Dr Shaw.
124. The claimant's case was that Dr Shaw said, verbatim: 'a mate who lives in Africa told me that African monkeys are very bad, they are wicked, they throw poo at people.' She said that this joke came out of nowhere – there was no relevant context for it. She said that she was shocked and very upset but everyone else burst out laughing.
125. Dr Shaw told the Tribunal that he sometimes uses stories when sharing clinical insights or experience with the team. He told an anecdote which related to events 30 – 40 years ago when he stayed with a friend living in a rural part of Africa. He was excited to discover that there were monkeys living in the tree opposite his friend's house. The reality was that the monkeys did not like the people and would shout at them and sometimes throw faeces. The point of the story was that people sometimes naively enter a situation with an approach in mind and good intentions that are not always reciprocated by the other party to the relationship.
126. Dr Shaw said that, having read statements given to an internal investigation, he now recalls the context in which the monkey anecdote arose, although he did not recall the context when he was spoken to during the internal investigation. They were discussing a child who presented as extremely emotionally shut down and difficult to read but occasionally gave insight into

the very malign world view they were brought up to follow. A colleague reported how the child had called her 'monkey fart' and 'monkey poo' in a session. That had brought his anecdote to mind and he shared it because it captured the feelings of hurt and surprise caused by an unexpected attack.

127. In the internal investigation into the claimant's complaints about this matter, Ms Bailey reported that Ms Rocamora Sanches had said that on one occasion the child ran away from her, calling her a name like "monkey-fart" or "monkey-poo." Dr Shaw's anecdote related to that; he said that a certain breed of monkey did throw poo and that what the child said might have been factually accurate.
128. Ms Rocamora Sanches gave a similar account of the conversation. She said that she had laughed when Dr Shaw said some monkeys threw faeces at people. Neither she nor Ms Bailey perceived Dr Shaw's remarks as being targeted at anyone.
129. The claimant said in evidence that Ms Bailey and Ms Rocamora Sanches had made up these accounts; this was a child who did not engage and therefore would not have said those things.
130. The claimant gave evidence about why she perceived the joke to be racist. It was put to her that Dr Shaw had not compared her or any other African person to a monkey:

*You can't tell me what I feel. Anyone who uses a monkey joke in front of an African is referring to an African. It hurts me.*

...

*I took it as him referring to me. Because of history around that word.*

*He was saying the monkey joke to get a laugh for no reason at all. In the sense that he said it and how he said it and how they laughed, it was me, they were referring to me. Everything happening to me in the team and then that joke comes.*

131. The claimant also gave evidence that Dr Shaw had a monkey mug which he turned towards her in meetings so that the monkey faced her. This was raised in the claimant's witness statement for the first time.
132. These were online meetings with a number of people present. Dr Shaw showed the Tribunal what he said was the only monkey mug in his kitchen cupboard. This had a stylised drawing of a monkey amongst other animals and plants on it. The claimant said that was not the mug; she did not describe the mug she said she saw.
133. Dr Shaw said that he was unaware that the claimant took the monkey mug to be about her; he had not intended to send any coded signal. He did not point the mug at the claimant. He observed that he is careful to place his mug down on a particular mat so as not to mark the table he sits at.

134. The claimant also made an allegation that Dr Shaw would lean close to the screen when the claimant was speaking in online meetings and cup his ear.
135. Dr Shaw said that he might lean forward when trying to hear someone in an online meeting. His hearing was not as good as it could be and he sometimes found it hard to hear over video link. It was not his intention to be disrespectful; he wanted to catch every word and make sure people did not have to repeat themselves.
136. She made a further allegation about Dr Shaw not speaking to her. She clarified in oral evidence that she was talking about occasions when she saw Dr Shaw in the canteen speaking with other people. She said that he did not speak to her socially in that way.
137. Dr Shaw said that he would welcome a conversation with the claimant; he just did not know her that well. He could think of few occasions when they would have been in the canteen together. He had first worked with Ms Marinou in 2007 and they had worked together fairly steadily since then. They were not close friends but they knew about each other's lives and would touch base when they saw each other. He had known some of the other members of the team a number of years and had shared a 'bit of ourselves with each other'.
138. We heard some additional evidence about socializing. The claimant said that she was not invited to some social occasions that she had heard other members of the team talking about in team meetings; they would be discussing what they had eaten and restaurants they could try on another occasion.
139. Ms Marinou said that sometimes in remote team meetings there would be a discussion about trying to organise a coffee together. These discussions had occurred in front of everyone including the claimant. The claimant had not been interested in socializing with the team and had not attended a meal which had recently been arranged. That was the only such outing Mrs Marinou was aware of taking place and the claimant had been invited to it.
140. Ms Marinou said that there had been no Christmas social occasions for some years due to the pandemic. The claimant had not attended one arranged more recently. We saw an email for that event in which the claimant was amongst the invitees.
141. On 31 March 2023, the claimant's fixed term contract expired. Ms Maunder had gone on maternity leave by this point.
142. On 10 April 2023, the claimant sent Mr Ajibola various amendments to his draft email to Mr Holland.
143. In her covering email, the claimant said:



*It's been a particularly tough time for me in the team. Recently, they started having a discussion in a team meeting about Monkeys - laughing and saying Monkeys are bad as someone living in Africa said that they throw poo at people. I was extremely upset by this as I know that it was on me. What does this have to do with the team meeting? I had to take a couple of days off and then annual leave because I cannot seem to get my head around why these people are so confident as to be behaving like this. I have spoken out about issues like this the whole time I have been here which is from November 2019. The racism is at an organisational and local level. It is so endemic that it is part of the furniture.*

*People are so brazen about it as they know nothing will happen.*

*Now, they are hell bent on getting rid of me.*

144. Mr Ajibola said that he explained to the claimant that he could not make the additions she wanted to his draft email without evidence to support the allegations.

145. On 24 April 2023, Mr Ajibola emailed Mr Kent about the claimant's contract not being extended:

*Unfortunately, a change form was not completed to extend Gloria's FTC from 31st March 2023 – Gloria called me thinking pay day was today but I informed her it was tomorrow. I have completed a change form for Gloria this morning and will ensure she is on the supp run for the following week where she will receive her full pay. Can we please find out from Hulya what happened?*

146. Mr Kent wrote to the claimant to say that the situation would be rectified:

*I heard from Dayo that you have not received pay and am grateful that he has set up a change to ensure prompt payment asap. I am very sorry this has happened (I am also aware it happened before) and will endeavour to find out what has not taken place in order for your contract change to have fallen behind.*

147. About supervision, he wrote:

*You and Hulya have both asked about supervision and I have been in touch with colleagues through the social work discipline as it seems most relevant to your work as a Family Support Worker. One of our wider trust colleagues has asked what the frequency would need to be, please could you let me know how often you were meeting with your previous supervisor?*

148. The claimant replied to say that the apology was not accepted. She also complained about lack of supervision:

*Hulya is asking about my supervision. How kind of her. However, it was on her watch that I have not had supervision for 6 months and counting. Yes, the last time I had supervision was October 2022. My supervision contract states that this should happen monthly but perhaps my team management thinks that as an 'office junior' I do not need it at all.*

149. Mr Kent then emailed Ms Karabulut

*It looks like Gloria's contract extension not extended, Dayo has been in touch. Likely to inflame things I imagine.*

150. Ms Karabulut said that she would not know to extend the contract unless told by HR. She wrote to Mr Kent on 25 April 2023:  
*I hope you are well and thank you for letting me know that. I do not understand how this happened but I hope Dayo can sort it out asap to reduce any inconvenience that has caused Gloria.*
151. The claimant did not receive her salary on the April pay date of 25 April 2023 but the respondent rectified the problem on 3 May 2023 with a supplementary pay run.
152. On 4 May 2023, the claimant commenced Early Conciliation.
153. On 5 May 2023, there was a meeting involving the claimant, Mr Kent, Mr Ajibola and Ms Karabulut. This was the meeting described by the claimant as a 'meeting to answer trumped up charges'.
154. Mr Kent said that he invited the claimant to a meeting to discuss a matter brought to his attention by Ms Karabulut on behalf of another member of staff. There had been an assertion that the claimant had told a foster carer that the child did not need to come to the Trust for therapy, which contradicted the child's clinical care plan. A member of the team raised a concern but it was not a formal complaint or grievance. On 4 April he had written to her and Ms Karabulut:  
*I would like to meet with you both to discuss the case as I understand there have been some differences of opinion within the team about the management of this case which have started to enter into the child's therapy material. I also understand that the Local Authority Social Worker and the child's guardian have asked about the matter. My aim is that any professional differences, institutional issues or dynamics within the team and between colleagues do not adversely effect the child's experience given the sensitivity, timing and integrity of an international adoption process. I understand that most clinical work involving colleagues is discussed in the team clinical meeting but as the issues in this case may be contentious I thought it would be more appropriate, discreet and manageable if we met together. I would like to meet face to face hence giving plenty of notice. Please confirm, with thanks.*
155. The claimant's account of what she was asked about at the meeting was quite different from the respondent's version. She said that she was told that the child had told their therapist that the child would ask the claimant to come and beat the therapist up. She said that she asked why the therapist in question was not at the meeting.
156. When it was put to Mr Kent that the allegation concerned beating up, he said that there were quite a few things in the notes and that there was a statement

about how 'Auntie Gloria' would tell someone off, but there was nothing about beating up.

157. At the meeting the claimant said that the stated narrative of the child could have been fabricated in the clinical record. The claimant did say a number of times in evidence and in her submissions to the Tribunal that she had objected to the therapist moving the child's therapy from her school to the Tavistock due to the disruption to the child and her schooling in particular but she denied that this was what was discussed at the meeting. She did however accept she had raised it strongly at a team meeting. She said she had not met the child.
158. Ms Karabulut also gave evidence that the discussion was about the child saying that the claimant did not support the care plan.
159. Mr Kent said that the claimant said that the clinician who reported the matter was lying, the meeting was unproductive, and he decided not to take the matter any further.
160. There were emails between Mr Ajibola and Ms Karabulut about the problem which had arisen with the claimant's contract extension. Ms Karabulut had not understood that Mr Ajibola was investigating the matters and felt left out of the loop. Mr Ajibola wrote:

*I am also aware that not just clinicians experience issues relating to contract extension, and it is a concern for all staff groups across the organisation. Both Tim and I have discussed with Gloria that this was not a deliberate or targeted act towards her. We have also assured Gloria that these administrative errors would be investigated to ensure it does not happen in the future, we believe this matter is closed. Again, I am not in control of Gloria mentioning this matter occasionally, all we can do is reiterate our position. Regarding the fixed term monthly report, the HR advisers send out reports to the senior managers and we expect this to be disseminated by the senior managers across their relevant service lines. If you are not receiving this report and the general managers are not receiving these reports either, I would need to be informed so that I can investigate further.*

161. Ms Karabulut wrote: *Regarding monitoring the contract deadline, I do not have the list of contract deadlines, however, if I am given the list, I am happy to monitor this to prevent any of the team members experiencing hardship due to the possibility of not being paid.*
162. We note that we considered it was improbable Ms Karabulut would have written to Mr Ajibola that she had not been receiving the contract deadline list if in fact she had been receiving it because there would no doubt have been evidence that she had been sent it in the form of emails.
163. On 12 May 2023, there was a team meeting at which the claimant said that someone had told a racist joke at an earlier meeting. This was a reference to the monkey anecdote incident. The claimant said that Dr Shaw was the

ringleader. Dr Shaw apologised for offending the claimant. The claimant said that she said at the meeting that she held the others complicit as they had laughed but that no one else apologized.

164. There was a disagreement between the parties as to how the claimant responded to the apology. Dr Shaw said that the claimant said: 'Thank you that means a lot to me.' Ms Karabulut and Mr Kent agreed with that account. The claimant denied that she had thanked Dr Shaw. Ultimately nothing really turned on this issue but we concluded that the claimant had thanked Dr Shaw but did not recall doing so.

165. On 14 May 2023, the claimant raised a complaint in an email to Ms Karabulut:

*This is to register my displeasure at being asked what amounted to private questions at the team meeting in front of others. I have always worked with adults could not understand why you were asking me to do child observation. Child observation is a specialist activity where you not only observe but are able to interpret what is going on. You asked why I could not do it. I then had to mention something about my medical status.*

166. She also complained about lack of work being allocated to her and being asked to work outside of her contracted days.

167. On 19 May 2023, the claimant submitted a grievance to Ms Karabulut:

*As per the Tavistock and Portman Grievance procedure I hereby make a formal complaint for several issues that has happened to me in the recent past.*

- *My salary not paid for the consecutive months of August, September, and October 2022.*
- *Not having had supervision since October 2022*
- *Case/parenting work not being allocated to me for well over a year.*
- *The team making racist jokes at a Team meeting.*
- *The repeated breaches of my confidentiality.*

*This is by no means an exhaustive list of the issues that I have faced and continue to face in the team. However, for now I want a detailed explanation of the reasons behind the above points. I want to have detailed, believable, and verifiable answers.*

168. On 23 May 2023, Mr Ajibola wrote to the claimant to tell her how her grievance would be dealt with:

*Your complaints are covered both under the grievance policy and procedure and the bullying and harassment procedure. The concerns relating to your salary not paid for the consecutive months of August, September and October 2022, lack of supervision since October 2022 and not being allocated case/parenting work for over a year, are covered under the grievance*

*procedure. These are all concerns relating to the terms and conditions of your employment arising at work. The concerns you raised relating to the team making racist jokes at a team meeting will be covered under the Trust Bullying & Harassment procedure. This concern relates to unwanted conduct that violates your dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.*

169. Mr Kent was asked by Mr Ajibola to consider the parts of the claimant's grievance about pay, supervision, not being allocated work and breach of confidentiality.
170. On 14 June 2023, Mr Kent wrote to the claimant:
- I mentioned that I had found a new supervisor and wanted to introduce you to Trinidad by email in the first instance. Trinidad, known as Trini is a Consultant Social Worker and has a wealth of relevant experience in Tavistock and associated services , this includes a significant experience working in families in or on the edge of care, vulnerable children and families, trauma, migration and a host of other issues that I think are close to the heart of the returning families team. I acknowledge that you have had a gap in clinical supervision support and a limited caseload. I hope it will be possible for you and Trinidad to meet and set up an agreement about a monthly supervision focussing on your clinical work, not line management or other aspects. I copy Hulya as your team and line manager. I suspect it may be best / easiest to consider an online meeting but might also work best if you are able to meet at least once, initially, in person.*
171. On 28 June 2023, the claimant's Early Conciliation certificate was issued.
172. On 29 June 2023, terms of reference were drafted for the 19 May 2023 grievance. That same day the claimant was provided with the grievance terms of reference and informed that Mr Kent would be investigating the parts of the grievance which related to her terms of employment.
173. On 4 July 2023, the claimant presented her claim form to the Tribunal.
174. On 7 July 2023, Mr Kent contacted the claimant suggesting that they meet to discuss her grievance. He also raised the issue of making an occupational health referral to understand whether the claimant was able to do face to face work.
175. On 12 July 2023, the claimant wrote to Mr Kent saying that it was not appropriate for him to hear her grievance, raising concerns about how the matter was being investigated and about the suggestion that she have an occupational health appointment.
176. Also on 12 July 2023, Ms Merchant became aware of the claimant's DSAR and subsequently made enquiries with her team to understand why it had not previously been drawn to her attention as she is the person who deals with the requests. She was told that the HR Advisor who had the request had

missed responding as they had gone on annual leave. She received the request on 20 July 2023 and told the team that they should make sure that DSARs were referred to her so she could log them and ensure they were dealt with within the legal timeframes.

177. On 18 July 2023, Ms A Nurse, communications and engagement manager, was appointed to investigate the bullying and harassment elements of the claimant's grievance.
178. On 19 July 2023, Ms Nurse contacted the claimant to arrange to meet with her. The claimant said that she would prefer to answer questions by email and then meet afterwards. There followed correspondence about the claimant providing answers and Ms Nurse told the claimant that she would need the answers by 4 August 2023. The claimant said that she had many things to do and was highly stressed and not very well. Ms Nurse replied that she would need the responses by that date in order to produce the report on time and meet deadlines she had been given. The claimant said that she had many other things to do and did not think it would be done by 4<sup>th</sup>. She had to look after her wellbeing first.
179. On 27 July 2023, the claimant was sent an email by Ms S Belavadi from HR advising her to tell her manager if she was unwell and giving her information about the Employee Assistance Service and other resources. She gave the claimant a deadline of 4 August 2023 to accord with timescales in the respondent's Bullying and Harassment policy. She offered the claimant the option of an in person interview instead.
180. The claimant replied saying that this email was harassing and that she was not well and 'will not let this issue jump the queue of what I have to do just to please the Tavistock.'
181. Ms Nurse in the meantime commenced investigating with others about the claimant's grievances, including conducting an investigation meeting with Dr Shaw on 4 August 2023 about the monkey anecdote incident.
182. Ultimately the claimant did not provide a response and Ms Belavadi wrote to her on 21 August 2023 to say that the matter would be closed but if she wished the matter to be reopened in future, she should contact the HR team in writing.
183. Meanwhile on 25 July 2023, Mr Kent wrote to the claimant responding in detail to her 12 July 2023 email. He said he would press ahead investigating her complaints unless the claimant wanted Ms Karabulut to deal with it more directly, perhaps by way of a mediated meeting. He had understood the claimant to be saying she wanted Ms Karabulut to deal with the matters rather than him.

184. After a number of attempts to meet with the claimant, Mr Kent was advised by HR that he did not need to take the matter further. He told the Tribunal that he thought that the matter was closed around September 2023.
185. On 1 August 2023, Ms Merchant wrote to the claimant apologising for the delay in responding to her DSAR and saying that she was now pursuing the request and would keep her updated on progress.
186. On 16 August 2023, the claimant wrote to Mr Ajibola making her complaint about Mr Kent's involvement in her grievance clearer:

*I previously let you know that I am not happy that Tim Kent will be handling any part of my complaint.*

*This is to confirm my stance on this matter. I will not be taking part in any investigation if he is the person carrying it out. I say this for a number of reasons.*

*Firstly, he is too close to the issues and from precedent my opinion is that he is not wholly objective.*

*He believes everything that Hulya says despite the fact that it has been proven that she lied in the past. She denied to Time [sic] that she breached my confidentiality at a team meeting. Tim asked for the minutes and none was forthcoming as at that time and for a period on one year team meetings were not being taken down. They have now been botched with the minimum of sentences that were made up. How can you write down with any accuracy what happened a year ago?*

*The truth was only revealed when I challenged her (Hulya) publicly at a team meeting and she apologised but in a subsequent email to me Tim was still promoting her version of events.*

*Secondly, Tim has investigated the nonpayment of my salary last year and came to the conclusion that it was the fault of HMRC.*

*I mentioned the racist jokes made at a team meeting at that meeting you attended where they were trying to pin something on me. Hulya immediately said something along the lines of - you did not say anything - referring to me. All Tim did was to again ask for the team minutes. I wondered aloud how anybody would think that people will record that they were joking about wicked African Monkeys in minutes.*

*That would have been the end of the issue but for the fact that I again confronted them in public at a reflective practice meeting where I got an apology. He was therefore surprised when I raised a grievance shortly after. Apologies do not mean a thing here -I received an apology after I was not paid for 3 months last year but in a couple of months it happened again. I had to do something because who is to say that sometime later something worse would not have happened. If all my complaints over the years had been acted on it would never have reached this point. It is my contention that the Tavistock empowered them to do it.*

*Thirdly, As I had done over the years, I again complained to Tim that I was not being allocated work.*

*Especialy when Ellen left, and Hulya prepared a new work list. I even sent Tim a copy of it. Nothing happened. He even agreed with Hulya that the work I have been allocated is commensurate with my role and experience. As usual, things suddenly took 360 degrees about turn when there was a rumour that I was about to take action. It has turned ugly. So much so that my resilience over the years despite the barrage of racism directed at me is wearing very thing. I am not well. I am seriously ill.*

*Fourthly, Tim invited me to a meeting to find out 'what my role would be going forward'. I was baffled, what did that mean? He started of by giving me a personal analogy about him leaving a local authority team in the past because the work they did was too close to home for him. In that case he was advising me to leave because in his opinion I am vocal about the work because I am an ISIS sympathise who came back from Syria. That was how I interpreted it. I was astounded.*

*I know for sure that Tim wants me to go and so does Hulya, how far up the ladder this goes I do not know.*

*Fifth, I was shouting from the roof tops that the last time I had supervision was on the 27th of October*

*2022, Tim said nothing for a long time, then started looking for somebody and then paused for 2 months. I now have a supervisor and our first meeting would be tomorrow after the last one failed to go ahead. However, the damage has been done. Great damage has been done to my health. I have been left with no support for all these months with work that is highly intense and emotionally draining. That nobody noticed that I was not being supervised until I brought it up is either discrimination against me or a gross failure of management. I am also beginning to wonder if somebody ordered the supervision sessions to stop.*

*I am supposed to take part in an investigation where there is no terms of reference and no time frame given. Would it just be an open-ended sham as usual.*

187. On 29 August 2023, Mr Ajibola responded to the claimant's email, saying that Mr Kent would continue as the investigating officer to review the claimant's grievance. He did not engage with all of the concerns the claimant had expressed about Mr Kent's suitability, given his previous involvement.
188. On 25 August 2023, Ms Merchant emailed the claimant to say the claimant's DSAR information had been posted to her by recorded delivery. She asked the claimant to confirm receipt. In fact it appeared that the claimant did not receive the documents by post on this occasion but she did not tell Ms Merchant that she had not received them.
189. Ms Merchant said that she subsequently became aware that the claimant had not seen the documents and she wrote to the claimant on 7 November 2023 saying that she was arranging for the documents to be re-sent.



## Law

### Direct discrimination

190. Direct discrimination under section 13 Equality Act 2010 occurs when a person treats another:
- Less favourably than that person treats a person who does not share that protected characteristic;
  - Because of that protected characteristic.
191. In a direct discrimination case, where the treatment of which the claimant complains is not overtly because of the protected characteristic, the key question is the “reason why” the decision or action of the respondent was taken. This involves consideration of mental processes of the individual responsible; see for example the decision of the Employment Appeal Tribunal in Amnesty International v Ahmed [2009] IRLR 884 at paragraphs 31 to 37 and the authorities there discussed. The protected characteristic need not be the main reason for the treatment, so long as it is an ‘effective cause’: O’Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor [1996] IRLR 372.
192. This exercise must be approached in accordance with the burden of proof provisions applying to Equality Act claims. This is found in section 136: “(2) if there are facts from which the Court could decide, in the absence of any other explanation, that person (A) contravened the provision concerned, the Court must hold that the contravention occurred. (3) but subsection (2) does not apply if A shows that A did not contravene the provision. “
193. Guidelines were set out by the Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142; [2005] IRLR 258 regarding the burden of proof (in the context of cases under the then Sex Discrimination Act 1975). They are as follows:

*(1) Pursuant to s.63A of the SDA, it is for the claimant who complains of sex discrimination to prove 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 by virtue of Part II or which by virtue of s.41 or s.42 of the SDA is to be treated as having been committed against the claimant. These are referred to below as 'such facts'.*

*(2) If the claimant does not prove such facts he or she will fail.*

*(3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of sex discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in'.*

- (4) *In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.*
- (5) *It is important to note the word 'could' in s.63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.*
- (6) *In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.*
- (7) *These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw in accordance with s.74(2)(b) of the SDA from an evasive or equivocal reply to a questionnaire or any other questions that fall within s.74(2) of the SDA.*
- (8) *Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts pursuant to s.56A(10) of the SDA. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.*
- (9) *Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.*
- (10) *It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.*
- (11) *To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since 'no discrimination whatsoever' is compatible with the Burden of Proof Directive.*
- (12) *That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.*
- (13) *Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.*

194. We bear in mind the guidance of Lord Justice Mummery in Madarassy, where he stated: ‘The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.’ The ‘something more’ need not be a great deal; in some instances it may be furnished by the context in which the discriminatory act has allegedly occurred: Deman v Commission for Equality and Human Rights and ors 2010 EWCA Civ 1279, CA.
195. The tribunal cannot take into account the respondent’s explanation for the alleged discrimination in determining whether the claimant has established a prima facie case so as to shift the burden of proof. (Laing v Manchester City Council and others [2006] IRLR 748; Madarassy v Nomura International plc [2007] IRLR 246, CA.)
196. The distinction between explanations and the facts adduced which may form part of those explanations is not a water tight division Laing v Manchester City Council and anor 2006 ICR 1519, EAT. The fact that inconsistent explanations are given for conduct may be taken into account in considering whether the burden has shifted; the substance and quality of those explanations are taken into account at the second stage: Veolia Environmental Services UK v Gumbs EAT 0487/12. In Commissioner of Police of the Metropolis v Denby EAT 0314/16 the EAT confirmed that a tribunal may consider all relevant evidence at the first stage of the burden of proof exercise, even if some of it is of an explanatory nature and emanates from the employer, whether or not it is called by the employer. The case law did not require the tribunal at the first stage to ‘blind itself to evasive, economical or untruthful evidence’ from the employer which may help the tribunal to decide that there are sufficient facts to shift the burden on to the employer to provide an explanation.
197. In Chief Constable of Kent Constabulary v Bowler EAT 0214/16 Mrs Justice Simler said that: ‘It is critical in discrimination cases that tribunals avoid a mechanistic approach to the drawing of inferences, which is simply part of the fact-finding process. All explanations identified in the evidence that might realistically explain the reason for the treatment by the alleged discriminator should be considered. These may be explanations relied on by the alleged discriminator, if accepted as genuine by a tribunal; or they may be explanations that arise from a tribunal’s own findings.’
198. Although unreasonable treatment without more will not cause the burden of proof to shift (Glasgow City Council v Zafar [1998] ICR 120, HL), unexplained unreasonable treatment may: Bahl v Law Society [2003] IRLR 640, EAT.
199. We remind ourselves that it is important not to approach the burden of proof in a mechanistic way and that our focus must be on whether we can properly and fairly infer discrimination: Laing v Manchester City Council and anor

[2006] ICR 1519, EAT. If we can make clear positive findings as to an employer's motivation, we need not revert to the burden of proof at all: Martin v Devonshires Solicitors [2011] ICR 352, EAT.

### Harassment

200. Under s 26 Equality Act 2010, a person harasses a claimant if he or she engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.
201. By virtue of s 212, conduct which amounts to harassment cannot also be direct discrimination under s 13.
202. In Richmond Pharmacology Ltd v Dhaliwal [2012] IRLR 336, EAT, Underhill J gave this guidance in relation to harassment in the context of a race harassment claim:
- ‘an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so.....Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.’
203. An ‘environment’ may be created by a single incident, provided the effects are of sufficient duration: Weeks v Newham College of Further Education EAT 0630/11.

### Victimisation

204. Under s 27 Equality Act 2010 a person victimises another person if they subject that person to a detriment because that person has done a protected act or the person doing the victimising believes that person has done or may do a protected act.
205. The definition of a protected act includes the making of an allegation that the person subsequently subjecting the claimant to a detriment (or another person) has contravened the Equality Act 2010 or done 'any other thing for the purpose or in connection with' the Equality Act.
206. A detriment is anything which an individual might reasonably consider changed their position for the worse or put them at a disadvantage. It could include a threat which the individual takes seriously and which it is reasonable for them to take seriously. An unjustified sense of grievance alone would not be sufficient to establish detriment: EHRC Employment Code, paras 9.8 and 9.9.
207. The protected act need not be the only or even the primary cause of the detriment, provided it is a significant factor: Pathan v South London Islamic Centre EAT 0312/13.

## **Submissions**

208. We received detailed written and oral submissions from both parties and have taken these into account when reaching our conclusions. We refer to them only insofar as is necessary to explain our conclusions.

## **Conclusions**

*Direct discrimination (s. 13 EqA 2010)*

*Issue: 2. What are the facts in relation to the following allegations:*

- 3. If disputed, did the Claimant reasonably see the treatment as a detriment?*
- 4. If so, has the Claimant proven facts from which the ET could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances not of the same race was or would have been treated?*
- 5. Claimant confirmed that she is relying upon actual comparators, being all other team members within The Returning Families Unit whose race is 'White' or 'White Other'.*
- 6. If so, has the Claimant also proven facts from which the ET could conclude that the less favourable treatment was because of race?*
- 7. If so, has the R shown that there was no less favourable treatment because of race?*

*a. Sandra Marinou not allocating new work to the Claimant for almost 2 months after the Claimant started employment (later in December 2019 or January 2020);*

209. We had a conflict of evidence between what Ms Marinou said about how much work was available to allocate and what the claimant said she was told by Ms Fitzsimmons. On balance we preferred Ms Marinou's evidence. The claimant's evidence was secondhand and we considered that she might well have misunderstood or misremembered what Ms Fitzsimmons had said about the cases and whether they were current or historic. We noted that in the claimant's submissions her account of what witnesses had said was frequently inaccurate in ways which suggested that what the claimant heard and remembered was strongly influenced by her beliefs about how she was being treated.
210. We accepted what Ms Marinou had to say about the difficulties she faced in December 2019, which was not in any material way challenged by the claimant. She was seeking effectively to re-establish the service with a largely new team whilst herself working between two services. Ms Marinou allocated the claimant one of the few open cases. It was clear that cases had to be allocated to practitioners based on the needs identified in the particular family. It would have been self-defeating of Ms Marinou not to allocate work to the claimant if there had been work which needed to be done, we saw no evidence to suggest that was the case.
211. Ms Marinou tried to allocate the claimant a new case when one came in, that of the family who had newly returned from Syria, but the issue about whether the claimant was immune to TB arose and prevented her from working with that family.
212. The claimant was unable to identify to the Tribunal work which was available at the time and suitable for her to do which was not allocated to her. Whilst we accept that she might not have been aware of every referral, it is clear that there were team meetings where work allocation was discussed and the claimant was at the time working in an office with colleagues.
213. Looking at the matter in the round we could see no evidence that Ms Marinou had failed to allocate work which was suitable for the claimant to do to the claimant during this period, nor, it follows, could we see any facts from which we could reasonably conclude that a comparable white employee would have been allocated more work by Ms Marinou during this period.
214. We did not uphold this claim.

*Issue b. Not having a monthly supervision (the Claimant asserts her last supervision was 27.10.2022) (between October 2022 – July 2023);*

215. We noted that there was a period of several months before Ms Maunder went on maternity leave when the claimant says she did not receive supervision. Although Ms Karabulut reported to the Tribunal that Ms Maunder had said she did supervise the claimant up until February 2022, we noted that the respondent had not produced any documentary records of supervision nor had Ms Maunder attended to give evidence.
216. The claimant told us that she did not think Ms Maunder was racist but said that she believed that Ms Maunder had been pressured to stop her supervision by Mr Kent. This was not put to Mr Kent and he was not questioned by the claimant about the delay in finding the claimant a supervisor.
217. In the circumstances we accepted that Ms Maunder had failed to provide the claimant with supervision for several months before she went on maternity leave. There was no allegation by the claimant that Ms Maunder was herself discriminating against the claimant by not providing supervision and the allegation, which seemed to the Tribunal in any event improbable given the other evidence we had, that Mr Kent had stopped Ms Maunder supervising the claimant, was not put to him so that he could have a chance to deal with it fairly in evidence. In the circumstances we could see no evidence from which we could reasonably conclude that the claimant was not receiving supervision during the period before Ms Maunder went on maternity leave for reasons connected with race.
218. So far as the period after that was concerned, the only evidence we had suggested that Mr Kent was genuinely and in good faith looking for a supervisor for the claimant outside the team and in due course found one.
219. We do not minimize the effect on the claimant of not having supervision during this extended period; it was clearly important that staff performing this difficult work had access to support and supervision was a part of that support.
220. Nonetheless we could see no facts from which we could reasonably conclude that the claimant was treated less favourably than a hypothetical white employee in her position would have been because of her race. There was no evidence that anyone in her team was in sufficiently similar circumstances to constitute an actual comparator.

*Issue: c. On 24.04.2023, C was not paid her salary, nobody else in the teams had the same issue (same thing happened in Summer of 2022, which relies as background to demonstrate that this was because of her race);*

221. Looking at both the earlier and later periods, the account given by the respondent was essentially that Ms Karabulut had not completed a change form because she had not been notified to do so by HR.
222. We accepted the unchallenged evidence that the process was as described by Mr Ajibola, ie the responsibility lay with HR to notify the relevant managers. We also accepted his evidence that what had happened in the claimant's case was, unfortunately, not exceptional.
223. Mr Ajibola had not, as part of his investigation, looked to see whether there were contract reports sent to relevant managers. We note that had there been any such reports, they should have formed part of the respondent's disclosure. In any event we did not have any notifications from HR either to service managers or managers further up the line management chain that the claimant's fixed term contract was expiring.
224. We accepted that not all members of the team would have required contract renewal at the same time, which would have made the failure in relation to the claimant much more striking. Some members of the team had transferred in from elsewhere in the service and may have been on permanent contracts or fixed term contracts with different end dates.
225. We considered whether there were facts from which we could reasonably conclude that the claimant's treatment was less favourable than that of other team members or hypothetical white staff. Was there anything beyond a difference in treatment and a difference in race, for example between the claimant and Ms Maunder?
226. We were troubled by the fact that the claimant suffered the same treatment twice. However bearing in mind the evidence that we had about what a generally turbulent time it was for the service, with significant uncertainty that it would continue through much of the period, and the evidence that, particularly on the second occasion, the respondent acted with alacrity to rectify the error, we could not find facts from which we could reasonably conclude that the claimant's race had played a part in her treatment.
227. It seemed to us when we were looking at the question of whether to draw an inference (which would have involved rejecting Ms Karabulut's evidence that she had not been notified by HR to do a change form for the claimant) that this would have been an inherently improbable way for Ms Karabulut to inflict race-based hostility on the claimant. Any failure to renew the contract would be addressed when the claimant became aware of it and the claimant was also likely to complain about Ms Karabulut once she became aware of the issue. If there had been a trail showing that Ms Karabulut had in fact been



notified by HR to complete a change form for the complainant, that fact could no doubt have had undesirable consequences for Ms Karabulut.

228. Even if the burden had passed, we were ultimately satisfied by Ms Karabulut's explanation of what had occurred; that she had not received notification from HR and was not otherwise aware that the claimant's contract was expiring.

*Issue: d. On 24.03.2023 at a team meeting, colleague Dr Mike Shaw (Consultant Psychiatrist) made a racist joke about African monkeys how they "were bad and very wicked and they throw poo at people" and everyone laughed. (C states she reported this to Dayo Ajibola (Associate Director HR), Tim Kent (Associate Director) and Micheal Holland (Chief Executive Officer)) The Claimant draws an inference that this was because of race because the previous conversation had related to serious work matters and this comment came out of nowhere.*

229. We accepted Dr Shaw's account of what he said and why he said it. It was not only corroborated by the accounts of other witnesses, it made sense in a way that the claimant's account did not. It is hard not to imagine there would have been some significant surprise at this professional meeting of Dr Shaw had said the words the claimant alleged he said with no context.
230. We considered that there was nothing in Dr Shaw's anecdote which was intended to refer to black people or the claimant in particular. We should make it clear that we entirely understand why the claimant was sensitive to talk about monkeys and African monkeys in particular, given the well known racist trope. We accept that the claimant genuinely concluded that the story was intended to refer to her and that she was genuinely very upset by it. That was why Dr Shaw apologised to her.
231. What we did not conclude was that Dr Shaw told the anecdote in any way because of the claimant's race.
232. Nor did we accept that there was any evidence at all that he had treated her less favourably because of her race in other respects. The suggestion that he turned his mug so that the drawing of a monkey faced her made no sense in the context of an online meeting where it is simply not possible to point an object at one person in particular. The claimant never explained how the mug could have been aimed at her in particular. We did not feel able in the circumstances to be satisfied by the claimant's evidence that Dr Shaw leaned forward and cupped his ear in particular when she spoke, rather than leaning forward more generally because of his hearing issues.
233. So far as social contact with Dr Shaw was concerned, we accepted that there was a limited number of occasions when the claimant and Dr Shaw would have met in person. She might have perceived that he was friendlier with

others because she saw him talking to team members he knew better but we did not have sufficient evidence from which we could properly infer that Dr Shaw was excluding the claimant or being unfriendly to her, much less that any such behaviour was because of the claimant's race.

234. We did not uphold this claim.

*Issue: e. Around 15 July 2021, Sandra Marinou and Jane Penfold demanded the Claimant's Occupational Health records for no reason and without her knowledge.*

235. We bore in mind that the circumstances were that Ms Penfold had come new to the issue of what was happening about the claimant's TB test / vaccine. The claimant was concerned to resolve the issue. It seemed to the Tribunal that it would be completely routine for a manager to ask HR what had been happening. The claimant suggested that this was because she was not being believed by Ms Penfold but we could not see that that was a reasonable inference to draw. Presented with a situation where there had clearly been delay, Ms Penfold would need to know what HR had been doing about that delay and what efforts they had made to seek cooperation from the occupational health service.

236. It is true to say that both Ms Penfold and HR seem to have misunderstood what the pre employment health document actually showed in respect of the TB issue.

237. Ms Penfold accepted that she looked at this occupational health document without having sought the claimant's permission to do so; she said that she would have expected HR to tell her if she asked for something she should not have.

238. We looked carefully at what Ms Penfold did, which seems to have been designed to further the claimant's interests, and which was not done in a way which was unreasonable (which unreasonableness might have been material from which it was appropriate to draw inferences). We did not have a context of other allegedly discriminatory acts by Ms Penfold to consider and we could not see facts from which we could reasonably conclude that the claimant's race played a role in her treatment.

239. We did not uphold this claim.

*Issue: f. R took 2 years to arrange for C to have a tuberculosis vaccination. C's first contact with Occupational Health was on 10 January 2020 and she alleges she wasn't provided the vaccinations until 6 February 2022.*

240. We have set out the facts in relation to the TB issue above. It is undoubtedly a sorry tale and it appears that the occupational health service was unhelpful in early 2020 and possibly at later points. It appears that the claimant's managers were making significant efforts to assist her. There was a period thereafter from March 2020 when, because everyone was working remotely and health services had other priorities, it was understandable that the issue was not being pursued, it appeared by the claimant as well as by the respondent.
241. The matter was then picked up in the summer of 2021 by Ms Penfold. The respondent pursued the issue for the claimant. There were issues with the occupational health provider and there were also issues with finding two days the claimant was at work when the provider was also running the Mantoux clinics. Ultimately the claimant was tested and vaccinated in January 2022. We could see nothing in that latter period where fault could fairly be laid at the respondent's door.
242. Looking at the period as a whole, we could not see anything the respondent had done wrong except that possibly the matter could have been escalated with the OH provider in some more forceful way at some point but the failure to do that was not itself unreasonable in a way which led us to draw any adverse inferences. We could however entirely understand why the claimant was frustrated and upset about the situation.
243. We had no actual comparator as we had no example of a white member of the team and had also required TB testing. We could see no facts from which we could reasonably conclude that anyone at the respondent involved in this matter had treated the claimant less favourably than a hypothetical white comparator because of her race.

*Issue: g. Approximately, between November 2022 and 1 April 2023, Tim Kent called me to ask 'what my role would be in the team going forward' and started the meeting by saying 'look, I want to tell you about myself. I was adopted. I am a mixture of Lebanese and [another race]' [The Claimant cannot recall but it may have been white, white British or white other.] "I started working with the adoption and fostering department at Hackney Council but had to leave because it was too close to home". C alleges that Tim Kent was suggesting that C was a former terrorist and she can see herself in service users.*

244. The claimant told the Tribunal that she believed Mr Kent was part of a conspiracy to remove her from the respondent because of her race.
245. Mr Kent's account of the matter was that he was seeking to explore what was going wrong for the claimant and to try and make her happier in her role. We accepted that was what he intended when asking her how she saw her role going forward. It seemed to us that it was an unsurprising question given the level of dissatisfaction the claimant had expressed by this point. Mr Kent

was relatively new in his role and was seeking to tackle the problems the claimant was raising.

246. He explained to the Tribunal why he shared his own experience. What may have gone wrong in particular in the discussion was the use of the word 'conflict', which we understand Mr Kent to have used in a very general sense. The claimant took that as a reference to war zones and inferred from what Mr Kent said about personal experience driving an interest in a particular kind of work that Mr Kent was suggesting that she was interested in working with these particular children because she had a background of war zones and/or involvement with terrorism. She did not challenge the account he gave of what he said or suggest that he had said she came from a war zone or was a terrorist.
247. The evidence we had, particularly when looking at the tone and content of Mr Kent's emails, was that he was seeking to take a gentle and empathetic approach to addressing the claimant's dissatisfaction. Part of that approach was to seek to bond with her by sharing his own personal history. That approach unfortunately backfired and the claimant came away with wrong impressions. We considered that by this point the claimant was regarding the respondent with such suspicion that she was seeing whatever anyone from the respondent said to her through a glass darkly.
248. We could see no facts from which we could reasonably conclude that Mr Kent would have handled this matter differently / more favourably had the claimant been white.
249. We did not uphold this claim.

Harassment (s.26 Equality Act 2010)

*8. Did the R engage in unwanted conduct related to the protected characteristic of race?*

*10. If so, did such conduct have the purpose or effect of violating the C's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the C? C to particularise if she asserts that the conduct had the purpose or effect.*

*11. In deciding whether the unwanted conduct has such effect (in the paragraph above), the ET will have regard to:*

*i. the perception of the C;*

*ii. the other circumstances of the case;*

*iii. whether it is reasonable for the conduct to have that effect*

9. *The unwanted conduct related to race complained of is:*

*Issue: a. On 24.03.2023 at a team meeting, colleague Dr Mike Shaw (Consultant Psychiatrist) made a racist joke about African monkeys how they "were bad and very wicked and they throw poo at people" and everyone laughed. (C states she reported this to Dayo Ajibola (Associate Director HR), Tim Kent (Associate Director) and Micheal Holland (Chief Executive Officer)) The Claimant draws an inference that this was because of race because the previous conversation had related to serious work matters and this comment came out of nowhere.*

250. We accepted that the conduct was unwanted by the claimant. It is clear from our findings above that Dr Shaw did not have the proscribed purpose. His intention, we accepted, was as he described, to use a well-thumbed anecdote to illustrate a point.

251. Did the conduct have the proscribed effect? We accepted that the claimant was very upset but we had to consider what was reasonable. We bear in mind the context was a professional meeting and the speaker was a mental health practitioner. The reasonable listener would not expect Dr Shaw to be introducing a racist trope. We accept that if the claimant has a history which has made her particularly alert to the possibility of racism, she might reasonably be alerted when an anecdote involving monkeys was introduced. However, the reasonable listener would have processed what Dr Shaw actually said and realised what he said did not relate to race. In those circumstances we do not consider that the anecdote could reasonably be considered to have a harassing effect.

252. We have already found that we had no evidence that Dr Shaw told the anecdote in any way because of race. Is there anything inherently relating to race? We concluded that there was not. Not every discussion about a monkey relates to race just because there is a history of racist language towards black people centred around monkeys.

253. We did not uphold this claim.

*Issue: b. Around 15 July 2021, Sandra Marinou and Jane Penfold demanded the Claimant's Occupational Health records for no reason and without her knowledge.*

254. We accepted that this conduct was unwanted by the claimant. It was clear to us that Ms Penfold's purpose was not a proscribed one. We did not consider that the conduct could reasonably be considered to have the harassing effect, given the case law set out above; it was certainly annoying to the

claimant and she was concerned about how her health records had been handled by HR, but it would cheapen the language to describe this incident as violating her dignity or creating the proscribed environment.

255. Just as we could see no facts from which we could reasonably conclude that this incident occurred because of the claimant's race, we could see no relationship with race.

256. We did not uphold this claim.

*Issue: c. R took 2 years to arrange for C to have a tuberculosis vaccination. C's first contact with Occupational Health was on 10 January 2020 and she alleges she wasn't provided the vaccinations until 6 February 2022.*

257. This was certainly unwanted conduct and extremely frustrating for the claimant. We found no evidence of a proscribed effect. If we focus on the conduct of the respondent's managers and their communications with the claimant, again we consider that it would cheapen the language to describe those actions as violating the claimant's dignity or creating the proscribed environment. At times when the issue was actively pursued, it would have been clear to the claimant that the respondent was seeking to resolve the matter with occupational health

258. Just as we could see no facts from which we could reasonably conclude that this course of events occurred because of the claimant's race, we could see no relationship with race.

259. We did not uphold this claim.

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#### Victimisation (s.27 Equality Act 2010)

*Issue: 12. The Protected Acts that the Claimant relies upon are the grievances on 18 March 2021, 2 November 2022, 3 November 2022 and in May 2023.*

*13. Are these protected acts (i.e. do they raise allegations of discrimination, harassment, etc)*

260. We considered whether each of these communications was a protected act.

261. The 18 March 2021 grievance opens with: 'Please accept this as a formal complaint of the racial treatment I have been subjected to...' and is clearly a protected act.

262. So far as the complaint made by email on 3 November 2022 is concerned, this contains a concern about non payment of salary but there is nothing in

the email itself, alone or in context, which indicates that any complaint is being made in relation to the Equality Act 2010.

263. The May 2023 grievance inter alia makes reference to racist jokes and is also a protected act.

*Issue: 14. Did the R subject the Claimant to any detriment because of the Protected Act?*

*15. The detriments that the Claimant asserts are:*

*a. Any reference to racism was removed from the description of C's grievance dated 18 March 2021;*

264. We did not find this allegation made out on the facts. The claimant's complaint is itself attached to the report. The title of the report indicates that it is an investigation report under the Bullying and Harassment Procedure and the claimant may have felt that this downplayed the discrimination angle but it was the procedure which applied to the complaint.

265. In the report, Mr Fitzmaurice says at the outset that: 'The complaint related to alleged racist behaviour of the Office Manager, Sandra Marinou' and then proceeds to itemize the allegations. Whilst he does not repeat that each is said to be race discrimination, he has already explained that the overarching complaint is one of race discrimination.

266. Since the detriment was not made out, we did not have to look at the issue of causation.

267. We did not uphold this claim.

*Issue: b. 02.02.2023 the Claimant submitted a Subject Access Request that was not responded to at the time of presenting the ET1 Claim Form;*

268. Here there was a delay before the DSAR was dealt with and we considered that this was reasonably regarded as a detriment.

269. We accepted the evidence of the respondent that the email had been overlooked because of a member of HR staff's holiday. This was consistent with the enquiries made by Ms Merchant and the message she then sent to the team about making sure DSARs came to her. We also had some regard to the likelihood that unconnected individuals in HR would have been seeking to subject the claimant to a detriment because of the only protected act which

had occurred by the time the claimant submitted her DSAR: the historic complaint against Ms Marinou.

270. We concluded that either we were able to decide this complaint without reverting to the burden of proof or alternatively that there were no facts from which we could reasonably conclude that the delay in responding to the DSAR was caused by the relevant protected act.
271. We did not uphold this claim.

*Issue: c. On 05.05.2023 the Claimant had a meeting with Hulya Karabulut and Tim Kent (with Dayo Ajibola (Associate Director HR) as an observer) to answer “trumped up charges”;*

272. We noted that Mr Kent’s email inviting the claimant to this meeting in no way sounded like an invitation to any kind of disciplinary meeting. To the contrary, it was clear that he was seeking to deal in a sensitive and non-inflammatory way with a professional difference which had arisen.
273. We accepted that the meeting was essentially about the issue of whether the claimant was saying the child should not have to attend therapy at the Tavistock, a topic it was clear from the claimant’s evidence she felt very strongly about. It may be that the claimant misremembered or misinterpreted a reference to the child saying Auntie Gloria would tell someone off as a reference to beating up. We accepted that there was no reference to beating up.
274. We did not consider that what Mr Kent did subjected the claimant to a detriment. The respondent had a responsibility to the children it looked after to attempt to resolve professional issues between staff which might affect the quality of support the child and family were receiving. There was clearly a matter which had troubled the clinician involved and which needed to be addressed. It seemed to us that Mr Kent had dealt with the issue as sensitively as he could and in a way which would not have made a reasonable employee consider that she was being disciplined.
275. Even if we had found there was a detriment, we consider that there was no evidence of a causal link with the by then historical grievance against Ms Marinou.
276. We did not uphold this claim.

*Issue: d. Around 15 July 2021, Sandra Marinou and Jane Penfold demanded the Claimant’s Occupational Health records for no reason and without her knowledge.*



277. We considered carefully whether this was a detriment. It was not clear to us what permissions had been given by the claimant for the use of the pre employment medical check and that matter was not explored in evidence. In those circumstances, and given that Ms Penfold had apologised and the respondent appeared to accept that she should have asked for the claimant's permission, we concluded that a reasonable employee could have considered she was put a disadvantage. We therefore concluded that there was a detriment.
278. When we looked at what had happened, however, we could see no facts from which we could reasonably conclude that the claimant's grievance against Ms Marinou had any causative role to play. Ms Marinou had simply suggested Ms Penfold speak with HR, which seemed to us an entirely benign suggestion in the circumstances. Ms Penfold was aware the claimant had a grievance against Ms Marinou but we accepted that her intentions were simply to try and get to the bottom of the issue about the claimant's TB immunity. We could see no facts from which we could conclude that the grievance against Ms Marinou played any role in her thinking.
279. We did not uphold this claim.

*Issue: e. R took 2 years to arrange for C to have a tuberculosis vaccination. C's first contact with Occupational Health was on 10 January 2020 and she alleges she wasn't provided the vaccinations until 6 February 2022.*

280. The delay in sorting this matter out was clearly a detriment. Ms Marinou's involvement with trying to resolve the matter for the claimant predated the grievance against her. There was then a hiatus due to the pandemic and Ms Penfold became involved. The efforts by the respondent to get some resolution through the occupational health service were well documented and we could see no facts from which we could reasonably conclude that the grievance against Ms Marinou had played any role in the delay in the claimant being tested and vaccinated.
281. We did not uphold this claim.

*Issue: f. Failure to deal with grievances submitted on 18 March 2021, 2 November 2022 and 3 November 2022 and in May 2023.*

282. It was not entirely clear in what sense the claimant said the respondent had failed to deal with each of these grievances. The 18 March 2021 grievance was subject to what appeared to the Tribunal to be a very detailed investigation and investigation report. The claimant complained about the minutes of her investigation meeting but then declined to amend the minutes

or to share the recording which she said she had made of the meeting. She declined to be involved further with the grievance investigation. Her own behaviour at this point did not seem to the Tribunal to have been reasonable or to have assisted in the resolution of her own grievances. If she was dissatisfied with the quality of the minutes, she had every opportunity to amend or challenge them.

283. The claimant suggested that the questioning of witnesses was not robust and that follow up questions were not asked but she provided no examples for the Tribunal to consider. Overall it appeared to us that detailed questions were asked and a thorough factfinding undertaken.
284. The claimant was also critical of the delay in concluding the grievance. We noted that the report took some time to write up after the interviews concluded; the last interview was in at the end of May 2021 and the claimant was not invited to a feedback meeting until early August 2021. We did not have evidence from Mr Fitzmaurice or anyone else as to why the grievance report took so long to prepare.
285. Delay is not however of itself a 'failure to deal' and although delay in resolving grievances is unfortunate and counter productive, the timescale did not seem to the Tribunal to be an unusual one for the type and complexity of the grievance. The claimant had by this point said she did not wish to take part in the grievance any more; she declined to attend a feedback meeting and said that she had deleted the report unread.
286. The investigation and outcome seemed to the Tribunal to be thorough and well-reasoned, even if the claimant did not agree with that outcome. She did not point to any aspect of the findings which was irrational or unsupported by evidence.
287. In the circumstances we did not find that the respondent had failed to deal with this grievance.
288. So far as the November 2022 complaint about the failure to pay salary is concerned, the claimant's complaint to the Tribunal was that she addressed that complaint to Ms Karabulut and Ms Karabulut ignored it. It is clear from the narrative set out above that this is not what occurred. Ms Karabulut responded to the claimant to say that the matter would be looked into and there was first an effort to deal with the claimant's concerns in emails from Ms Heneghan. The claimant was not satisfied that the respondent would sort out the issue of overpaid tax and National Insurance and there was then a meeting involving Mr Kent and Ms Heneghan on 15 December 2022. That led to complaints about Ms Heneghan which were pursued by Ms Stennett but ultimately ran aground because the claimant was not able to agree a date for a meeting.

289. At this point, it appeared to the Tribunal that the claimant had had a reasonable response: the respondent had explained how the situation came about and that the issue about tax and National Insurance would need to be addressed with HMRC.
290. Nonetheless when the claimant raised the matter further by writing to Mr Holland, the CEO, the matter was referred to Mr Ajibola after he joined the respondent in January 2023. It was not entirely clear to the Tribunal what the purpose of the report Mr Ajibola prepared for Mr Holland was and ultimately nothing further appears to have happened in relation to Mr Holland's involvement.
291. We were not able to conclude that this complaint, which was not a formal grievance, had not been dealt with. The issue was that the claimant wanted the respondent to reimburse her for the tax and National Insurance deducted at too high a rate by HMRC when she received payment of several months salary in one installment. The respondent was correct to say that that was a matter which could and should be sorted out with HMRC directly. The claimant had a substantive response to that effect before Mr Holland and Mr Ajibola became involved.
292. We note that the respondent asked the claimant during the course of this complaint if there were other financial consequences to her as a result of the delay in receiving her salary which they should consider. The claimant told them there were none, apparently out of pride and a belief that they would be 'gloating' about her misfortune. We do not consider that was a rational approach by the claimant and it deprived the respondent of the opportunity to address any consequential losses the claimant might have suffered as a result of the delay in salary payments.
293. So far as the May 2023 grievance was concerned, the respondent split that into two parts, one to be dealt with by Ms Nurse and the other by Mr Kent.
294. In relation to the part of the grievances which was in the hands of Ms Nurse, that was ultimately closed because the claimant would not attend a meeting to investigate and did not respond to written questions within an extended deadline she was given by Ms Nurse. Ms Nurse had begun investigating with others in order to progress the grievance.
295. We did not consider that there was a failure by the respondent to deal with that part of the grievance. Ultimately it did not proceed because of the claimant's lack of engagement within what were not unreasonable timescales. We note that it was left open to the claimant to contact the respondent if she wished to pursue the grievance.

296. So far as the part of the grievance allocated to Mr Kent was concerned, we considered that the claimant's complaint about lack of impartiality was reasonably made and should have been dealt with by Mr Ajibola by finding a new manager to consider that part of the grievance.
297. We accordingly concluded that there was some detriment to the claimant in how the respondent addressed her grievance in this respect.
298. Mr Ajibola said that he felt Mr Kent was best placed to hear these parts of the grievance. It was clear to us for the correspondence that he mistakenly thought the claimant was saying that Ms Karabulut should hear this part of the grievance. Given that she was even less impartial on these issues than Mr Kent, it seemed less surprising to the Tribunal that he failed to get to grips properly with the issue of Mr Kent's suitability. We considered carefully whether there were any facts from which we could reasonably conclude that the protected acts influenced Mr Ajibola in making that decision.
299. We did not so conclude. A striking feature was that Mr Ajibola had allocated the parts of the grievance where there was an overt allegation of race discrimination to Ms Nurse, an ostensibly unconnected and impartial manager. That seemed to us to undermine any inference that he was influenced by the nature of the complaints in how he decided to allocate the parts of the grievance. If he was trying to sweep complaints of race discrimination under the carpet, it seemed more likely that he would have allocated the race complaint to a manager who was not impartial.
300. We also note overall that the respondent did not shut down the grievance about race even when the claimant did not respond by deadlines and that the respondent remained willing to consider her complaint after that point. We did not find facts from which we could reasonably conclude that the fact of the protected acts had influenced Mr Ajibola's handling of the grievance and in particular the choice of Mr Kent to hear part of it and the decision not to remove Mr Kent.
301. We did not uphold this claim.

*Issue: g. Hulya Karabulut and Sandra Marinou deliberately failed to complete change forms and this resulted in discrepancies in C's pay in July 2022 - September 2022.*

302. It was clearly highly unreasonable that the claimant suffered delays to her pay not once but twice over this period.
303. We accepted the evidence of Ms Karabulut that she did not receive notification from HR about the change form; similarly we accepted Ms

Marinou's evidence on that point, which would have been relevant to the period before she went on maternity leave in August 2022.

304. We considered above whether the unreasonableness reasonably gave rise to an inference that the claimant's race was a factor in relation to the later allegation against Ms Karabulut. We looked similarly at whether it was appropriate to draw an inference that the protected acts played a role.
305. We accepted Mr Ajibola's evidence that this was a type of unreasonableness which had affected others and that it arose from problems with the respondent's systems.
306. In the circumstances, just as we accepted Ms Karabulut's evidence that the need to fill in a change form was not brought to her attention by HR, we also accepted Ms Marinou's evidence to that effect. Had she been seeking to take out any antagonism she felt towards the claimant for bringing a grievance against her in this way, this would have been a very foolish way to go about it. The issue would be corrected once the claimant noticed and Ms Marinou would put herself at risk of further complaints from the claimant, which could no doubt have had serious consequences for Ms Marinou if backed up by a paper trail showing Ms Marinou ignored a notification from HR.
307. Ms Karabulut explained in evidence why there was some further delay once the matter had been brought to her attention whilst she tried to understand what had gone wrong.
308. So whilst we considered that this had been a significant detriment to the claimant and there had been significant failings by the respondent, we did not find facts from which we could reasonably conclude that the claimant's grievance against Mrs Marinou had played a role in the detriment having occurred.
309. We did not uphold this claim.
310. Because we did not uphold any of the claimant's claims, we did not have to go on to consider issues about whether those claims had been presented in time.

## **Conclusion**

311. It follows from the above that all of the claimant's complaints are dismissed.

Employment Judge Joffe

12 August 2024

Sent to the parties on:

15 August 2024

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For the Tribunal Office:

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