EMPLOYMENT TRIBUNALS

Claimant: Mrs W Y Leung

Respondent: Waterfront Medical Cleaning Services South East Limited

Heard at: Southampton **On:** 11 – 20 December 2023

Before: Employment Judge Self
Ms N Murphy
Ms C Edwards

Appearances
For the Claimant: Mr A Lovell – Lay Representative / Claimant's husband
For the Respondent: Mr N Henry - Consultant

RESERVED JUDGMENT

The Claimant was victimised as set out at paragraphs **59.2. 59.4, 59.5, 59.6, 59.7 59.8 and 59.9** of the List of Issues.

The Protected Disclosure Detriment claims are dismissed save for the matter raised at **17.9** of the List of issues which is well-founded and succeeds.

The Respondent made an unlawful deduction of wages in the sum of **£43.20** and shall make payment of the same to the Claimant.

The Claim for holiday pay is not well-founded and is dismissed.

The Claim for Wrongful Dismissal is dismissed upon withdrawal.

The Claim of Automatically Unfair Dismissal for Health and Safety Reasons pursuant to section 100 of the Employment Rights Act 1996 (ERA) is dismissed upon withdrawal.

The Automatically Unfair Dismissal claim for making a protected disclosure pursuant to section 103A ERA 1996 is not well-founded and is dismissed.

The Claims pursuant to section 15 Equality Act 2010 (EqA) (Arising from Claims) are not well-founded and are dismissed.

The Claims of Failing to make Reasonable Adjustments (sections 20 and 21 EqA) are not well founded and are dismissed.

The Claim of Indirect Race Discrimination is not well founded and is dismissed.

The Claim of Direct Disability Discrimination is not well founded and is dismissed.

The Claim of Direct Race Discrimination is not well-founded and is dismissed.

The Claim of Disability related harassment is not well-founded and is dismissed.

The Claim of Race related Harassment is not well-founded and is dismissed.

The Claim of Indirect Disability Discrimination is not well-founded and is dismissed.

The Claim for breach of contract is dismissed.

WRITTEN REASONS

1. By a Claim Form lodged on 28 February 2021 Mrs Leung (hereafter the Claimant) seeks compensation for a wide range of claims against her former employer, Waterfront Medical Cleaning South East Limited (hereafter the Respondent). Those claims are:

    a) Automatically unfair dismissal (s.103A Employment Rights Act 1996 (ERA).
    b) Detriment – Public Interest Disclosure (s.43B ERA)
    c) Direct Discrimination (Race and Disability) (Section 13 EqA)
    d) Indirect discrimination (Race and Disability) (Section 19 EqA)
    e) Harassment (Race and Disability) (Section 27 EqA)
    f) Discrimination arising from Disability (Section 15 EqA)
    g) Failure to Make Reasonable Adjustments (sections 20 and 21 EqA)
    h) Victimisation (section 27 EqA)
    i) Unlawful deduction of wages (s.13 ERA)
    j) Breach of contract
    k) Non-payment of holiday pay (Reg 30 Working Time Regulations 1998)
    l) Failure to follow ACAS Code (s 207A TULRCA)

2. The Claimant had brought a claim of wrongful dismissal in relation to her notice pay but it was accepted at this hearing that the required sum had been paid and so that Claim has been dismissed upon withdrawal above. The health and safety unfair dismissal claim originally pleaded was also withdrawn and has been similarly dismissed. In the course of the evidence the Claimant

withdrew a number of allegations and those allegations are marked with "……." in the List of Issues set out below so as to keep the original numbering to aid ease of reference.

3. The Claimant was employed by the Respondent for less than two months, between 24 September 2020 and 12 November 2020. Early Conciliation commenced on 21 December 2020 and concluded on 1 February 2021. All acts and omissions complained about have been brought within the relevant statutory time limit.

4. There have been two Case Management Hearings (CMH). The issues were initially defined as far back as March 2022 but were then revised following a further CMH on 28 November 2023. At the start of this hearing the final List of Issues had not wholly agreed but that was finalised over the course of the first day, whilst Tribunal pre-reading was being undertaken. During his closing submissions, the Claimant's representative applied to add the Claimant's dismissal to the section 15 EqA claims. Despite the late application and the many other opportunities to raise the issue, the Respondent did not oppose the application and so in the absence of any stated prejudice to the Respondent, the amendment was allowed.

5. The final List of Issues was lengthy and was as follows:

1. What was the reason or principal reason for dismissal? The Respondent says it was a short-service dismissal with notice due to failed probationary period.

Automatically unfair dismissal (s100 Employment Rights Act 1996) – health and safety

2. …….

3. …….

Automatically unfair dismissal (s103A Employment Rights Act 1996) – Protected Disclosure

4. Was the reason or principal reason for dismissal that the Claimant made the following protected disclosures:

   4.1. On or about 15 October 2020 the claimant told Ms C Middleton, a nurse at the Hook surgery that the vaccine fridge alarm sounded on 02 October 2020 and she was concerned that it may have impacted upon the effectiveness of the vaccines stored therein?

   4.2. On or about 21 October 2020 the claimant informed her line manager Ms Ivelina Ivanova that a work colleague Max was not working his full shift and was not fully following the cleaning and disinfecting requirements?

4.3. On or about 04 November 2011 the claimant told Dr Baikie at the Hook surgery that she was not given sufficient time to fully complete all her cleaning duties?

5. If so, the claimant will be regarded as unfairly dismissed.

Protected disclosure – section 43A ERA1996

6. Did the claimant make the following disclosures, as defined in section 43B of the Employment Rights Act 1996? The Tribunal will decide:

7. What did the claimant say or write? When? To whom? The claimant says she made disclosures on these occasions:

7.1. On or about the middle of October 2020 the claimant told Ms C Middleton, a nurse at the Hook surgery that the vaccine fridge alarm sounded on 02 October 2020 and she was concerned that it may have impacted upon the effectiveness of the vaccines stored therein?

7.2. On or about 21 October 2020 the claimant informed her line manager Ms Ivelina Ivanova that a work colleague Max was not working his full shift and was not fully following the cleaning and disinfecting requirements?

7.3. On or about 04 November 2011 the claimant told Dr Baikie at the Hook surgery that she was not given sufficient time to fully complete all her cleaning duties?

7.4. On or about 13 November 2020 the claimant told Mr Kevin Killone and Ms Ivanova, by means of a written grievance that she had no key to the towel dispenser so could not fill it in a safe manner and had experienced bruising as she had insufficient time to fully complete her duties and her dyspraxia affected her coordination such that she hit or banged into objects, and there had been a breach of the coronavirus regulations?

7.5 On or about 13 November 2020 the claimant told the practice managers at Chessington Park and the Hook surgeries that there were health and safety issues because the light was not working in the cleaning storeroom, cleaning chemicals used on metal were potentially corrosive to metals, and the vaccine fridge alarm sounded on 02 October 2020?

7.6 On or about 16 November 2020 did the claimant told Ms Abdi, practice manager at the Hook surgery that Ms Ivanova, her manager, and her mother had stood close to her, blocked her exit, pointed at her with their fingers and further that they were both breaching coronavirus regulations in respect of the non-wearing of face masks?

7.7 On or about 16 November 2020 the Claimant informed Mr Killone of the incident on 13 November 2020 involving Ms Ivanova, her manager, and her

mother had stood close to her, blocked her exit, pointed at her with their fingers and further that they were both breaching coronavirus regulations in respect of the non-wearing of face masks?

8 Were all or any of the above, disclosures of information?

9 Did the claimant have a reasonable belief that the information disclosed was in the public interest?

10 Was that belief reasonable?

11 Did disclosures 7.4. 7.6 and 7.7 tend to show that a criminal offence had been committed, was being committed or was likely to be committed

12 Did the claimant have a reasonable belief that the information disclosed tended to show a relevant failure pursuant to section 43B (a) ERA 96 (all disclosures)?

13 Did all or any of the above disclosures tend to show that the health and safety of individual had been, was being or was likely to be endangered

14 Did the claimant have a reasonable belief that the information disclosed tended to show a relevant failure pursuant to section 43B (d) ERA 96?

15 If the claimant made a qualifying disclosure, was it made:

15.5 to the claimant's employer?

15.6 to a prescribed person?

16 If so, it was a protected disclosure.

Protected Disclosures - Detriments – section 48 ERA1996

17 Did the respondent do the following things:

17.5 ……..

17.6 ……..

17.7 ……..

17.8 ……..

17.9 ……..

17.10 ……..

17.11 …….

17.12 …….

17.13 On or about 23 October 2020 being shouted out by "Max" [the claimant's case is it was the tone of "Max's" voice and not the words spoken upon which she relies]

17.14 ……..

17.15 On 29 October 2020 Ms Ivanova took photos of the cleaning area of the claimant.

17.16 From 29 October subject the Claimant to criticism and repeated belittling, disparaging comments, and intimidating behaviour.

17.17 ……..

17.18 ……..

17.19 ……

17.20 On 11 November 2020 being ignored by Ms Ivanova when the claimant raised health and safety concerns and thereafter her work being subject to excessive scrutiny

17.21 ……

17.22 On 13 November 2020 Ms Ivanova and her mother threatened and/or intimidated and/or used insulting behaviour towards the claimant involving physical aggression and gestures as well as attempts to grab the claimant's phone

17.23 from 13 November 2020 Mr Killone failed to investigate any grievances of the claimant adequately or at all.

17.24 On 16 November 2020 Mr Killone backdated a letter of dismissal and made reference to non-existent letters.

18 By doing so, did it subject the claimant to detriment?

19 If so were they done on the ground that the claimant had made one or more protected disclosures?

Direct discrimination on grounds of race – s.13 EQA2010

20 Did the respondent to the following?

20.5 From 6 October 2020 give the claimant more rooms, more toilets, and more objects to clean in each room than her colleagues.

20.6 On 12 October 2020 Ms Ivanova told the Claimant that she was too slow and needed to work faster

20.7 On 15 October and 04 November Ms Ivanova did not return calls made by the claimant

20.8 On 16 October 2020 Ms Ivanova told the Claimant that she was not to work with Ms Petya Karanova.

20.9 ……...

20.10 On or about 12 October 2020 and 29 October 2020 Ms Ivanova and her mother criticised the Claimant for using too much chemical.

20.11 Throughout the course of her employment Ms Ivanova, her mother and Mr Killone told the Claimant that she was too slow.

20.12 On 29 October 2020 Ms Ivanova failed to tell the claimant that “Max” had been dismissed but informing other Bulgarian colleagues.

20.13 On 29 October 2020 Ms Ivanova took photos of areas the claimant had not cleaned or were difficult to clean.

20.14 From on or about 30 October 2020 Ms Ivanova and her mother communicating in Bulgarian in the presence of the claimant.

20.15 On 04 November 2020 Ms Ivanova unfavourably compared the output of the claimant to Bulgarian colleagues.

20.16 From 13 November 2020 Mr Killone failed to investigate any grievances of the claimant adequately or at all.

20.17 From approximately the middle of October 2020 segregated the claimant from working with Bulgarian colleagues.

21 Was that less favourable treatment?

21.5 The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant’s.

21.6 The claimant says s/he was treated worse than Max, Petya Karanova and Yoana Karanova or a hypothetical comparator.

22 If so, was it because of the Claimant’s race?

23 Did the respondent’s treatment amount to a detriment?

Direct discrimination on grounds of disability – s.13 EQA2010

24 Did the respondent to the following?

24.5 From 6 October 2020 gave the claimant given more rooms, more toilets, and more objects to clean in each room than her colleagues.

24.6 From 26 September 2020 failed to adjust the claimant’s workload despite requests from the claimant.

24.7 Throughout the course of her employment being told by Ms Ivanova, her mother and Mr Killone that she was too slow.

24.8 On 12 October 2020 Ms Ivanova told the Claimant that she was too slow and needed to work faster

24.9 On or about 12 October 2020 and 29 October 2020 Ms Ivanova and her mother criticised the Claimant for using too much chemical.

24.10 On 15 October and 04 November Ms Ivanova did not return calls made by the claimant but would answer calls from Bulgarian colleagues.

24.11 On 16 October 2020 being told by Ms Ivanova that she was not to work with Ms Petya Karanova.

24.12 From the middle of October 2020 segregated the claimant from Bulgarian colleagues.

24.13 …….

24.14 On 29 October 2020 Ms Ivanova took photos of areas the claimant had not cleaned or were difficult to clean.

24.15 On 04 November 2020 Ms Ivanova unfavourably compared the output of the claimant to non-disabled colleagues.

24.16 On 4 November 2020 Ms Ivanova ignored the Claimant when raising concerns;

24.17 From 13 November 2020 Mr Killone failed to investigate any grievances of the claimant adequately or at all.

25 Was that less favourable treatment?

25.5 The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

25.6 The claimant says she was treated worse than Max, Petya Karanova and Yoana Karanova o4 a hypothetical comparator.

26 If so, was it because of disability?

27 Did the respondent's treatment amount to a detriment?

Discrimination arising from disability (Equality Act 2010 section 15)

28 Did the respondent treat the claimant unfavourably by:-

28.5 From 6 October 2020 giving the claimant given more rooms, more toilets, and more objects to clean in each room than her colleagues.

28.6 Not providing the claimant with a printed copy of a task list or training notes or other information

28.7 Not permitting the Claimant to record in person meetings.

28.8 Not permitting or allowing extra time to complete specific tasks including those requiring good coordination of balance.

28.9 On the week commencing 05 October 2020 requiring the claimant to undertake deep cleaning without extra time to undertake those duties

28.10 From 16 October 2020 Stopping Ms Petya Karanova from assisting the claimant with particularly challenging tasks.

28.11 Complaining that the Claimant's shouted and interpreting the Claimant's raised voice as aggression rather than frustration.

28.12 Not forewarning the Claimant of Mr Killone's attendance at the premises on 22nd October 2020 and allow time to prepare for the meeting.

28.13 Not repairing a light in the rear storeroom so that a dark environment worsened the claimant's disability.

28.14 The Claimant's dismissal.

29 Did the following things arise in consequence of the claimant's dyspraxia?

29.5 difficulty in understanding oral instructions, and

29.6 when pressured suffered lapses of concentration

29.7 when pressured, her mobility became affected in that she appeared clumsy and banged into objects.

29.8 slowness of working

30 Was the unfavourable treatment because of any of those things?

31 Was the treatment by the respondent a proportionate means of achieving a legitimate aim?

32 Did the respondent know or could it reasonably have been expected to know the claimant had the disability and if so from what date?

Indirect discrimination on grounds of race (Equality Act 2010 section 19)

33 The claimant contends the respondent applied the provision criteria or practices (PCPs) of recruiting staff who could communicate in Bulgarian or of Bulgarian race or origin.

34 Did that amount to a PCP in law?

35 Did the respondent apply the PCP to persons who did not share the claimant's protected characteristics of race?

36 Did the PCP put the claimant at a particular disadvantage because she did not speak Bulgarian?

37 Was the PCP a proportionate means of achieving a legitimate aim?

38 was the PCP an appropriate and reasonably necessary way to achieve those aims;

Indirect discrimination on grounds of disability (Equality Act 2010 section 19)

39 The claimant contends the respondent applied the provision criteria or practices (PCPs) of communicating orally.

40 Did that amount to a PCP in law?

41 Did the respondent apply the PCP to persons who did not share the claimant's disability?

42 Did either PCP put the claimant at a particular disadvantage because her dyspraxia caused the Claimant difficulty in verbal communication and verbal comprehension.

43 Was the PCP a proportionate means of achieving a legitimate aim?

44 was the PCP an appropriate and reasonably necessary way to achieve those aims;

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

45 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

46 A "PCP" is a provision, criterion, or practice. Did the respondent have the following PCP's;-

46.5 A requirement to complete all contractual duties within a given time frame.

46.6 Not permitting the recording of face-to-face meetings

46.7 A provision of demonstrating the skills required and work to be undertaken by means of demonstration in the role,.

47 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability?

48 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

49 What steps could have been taken to avoid the disadvantage? The claimant suggests the following adjustments should have been made: –

49.5 Providing the claimant with written task lists and training notes

49.6 Permitting face-to-face meetings to be recorded providing printed notes of the meeting

49.7 Permitting the claimant extra time to complete her duties

49.8 Providing an auxiliary aid for example a stepladder with a handrail to address the claimant's mobility issue.

49.9 Allowing the claimant to work with another operative so tasks could be shared.

49.10 Adjusting the work of the claimant was required to do in the course of a shift.

49.11 Providing additional cleaning equipment for the claimant's use.

50 Was it reasonable for the respondent to have to take those steps and when?

51 Did the respondent fail to take those steps?

Harassment Race and Disability– s.26 EQA2010

52 Did the Respondent engage in unwanted conduct relating to the Claimant's race and/or disability?

53 The claimant relies upon the following unwanted conduct: –

53.5 From 26 September 2020 give the claimant more rooms, more toilets, and more objects to clean in each room than her colleagues.

53.6 From 26 September 2020 fail to provide the claimant with adequate cleaning equipment

53.7 Throughout the course of her employment Ms Ivanova, her mother and Mr Killone told the Claimant that she was too slow.

53.8 Fail to supply a written task list and training manual Despite being requested to do so.

53.9 On or about 05 October 2020 did Ms Ivanova say to the claimant "whatever you need to do back your own part" (sic)

53.10 From about 12 October 2020 Ms Ivanova and her mother talked about the claimant in Bulgarian in her presence without providing a translation

53.11 On 15 October and 04 November Ms Ivanova did not return calls made by the claimant but would answer calls from Bulgarian colleagues.

53.12 From around 16 October 2020 being told by Ms Ivanova that she was not to work with Ms Petya Karanova.

53.13 …….

53.14 On or about 23 October 2020 being shouted out by "Max" [the claimant's case is it was the tone of "Max's" voice and not the words spoken upon which she relies]

53.15 ……..

53.16 On 29 October 2020 Ms Ivanova took photos of areas the claimant had not cleaned or were difficult to clean.

53.17 From 29 October subject the Claimant to criticism and repeated belittling, disparaging comments, and intimidating behaviour.

53.18 On 02 November 2020 Ms Ivanova made comments in relation to time limits following the introduction of the clock-in clock-out system

53.19 On 04 November 2020 Being asked by Ms Ivanova if she received an email which the claimant did not receive until she had started work

53.20 On 4 November 2020 Ms Ivanova ignored the Claimant when raising concerns;

53.21 On or about 04 November 2020 Ms Ivanova unfairly comparing the claimant's output to other Bulgarian workers.

53.22 On 11 November 2020 being ignored by Ms Ivanova when the claimant raised health and safety concerns and thereafter her work being subject to excessive scrutiny

53.23 On 12 November 2020 Ms Ivanova and her mother dismissed the claimant

53.24 On 13 November 2020 Ms Ivanova and her mother threatened and/or intimidated and/or used insulting behaviour towards the claimant involving physical aggression and gestures as well as attempts to grab the claimant's phone

53.25 From 13 November 2020 Mr Killone failed to investigate any grievances of the claimant adequately or at all.

53.26 On 16 November 2020 Mr Killone made reference to non-existent letters.

54 In each case, was the conduct related to a protected characteristic?

55 If so, did the conduct have the purpose or effect of violating the Claimant's dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment for her?

56 Was it reasonable for the conduct to have that effect?

Victimisation Section 27 of the Equality Act 2010

57 The claimant's protected acts are said to be

57.5 An oral conversation on 12 November 2020 between herself and Ms Ivanova and her mother when the Claimant said the Respondent was breaching EQA 2010 and

57.6 A grievance dated 13 November 2020 in which the claimant contended the respondent was breaching EQA 2010.

58 Were either of the above protected acts?

59 If so did the Respondent do the following things:

59.1 On 13 November 2020 Ms Ivanova and her mother threatened and/or intimidated and/or used insulting behaviour towards the claimant involving physical aggression and gestures as well as attempts to grab the claimant's phone.

59.2 Fabricate failed probation as the reason for dismissal

59.3 Dismiss the claimant

59.4 Give insufficient notice on 29 November for a grievance hearing on 01 December

59.5 Propose a grievance hearing in Plymouth when the claimant lived in Chessington.

59.6 Accuse the claimant of failing to attend a rescheduled grievance hearing on 11 December 2020 when the claimant contended she was not given notice of the same.

59.7 Not hold a grievance hearing

59.8 Not offer an appeal against a grievance decision

59.9 Refuse to hold an appeal hearing

59.10 Fail to provide the claimant with payslips or payslip passwords

59.11 Fail to pay the claimant money owed.

59.12 Not responding to e-mails post 12 November 2020.

60 By doing so, did it subject the claimant to detriment?

61 If so, was the detriment because the claimant did one or more of the protected acts?

62 Was it because the respondent believed the claimant had done, or might do, a protected act?

Holiday Pay (Working Time Regulations 1998)

63 The Claimant's holiday entitlement was 20 days plus bank holidays. On 4 December 2020, the Claimant was paid 8 hours of accrued holiday pay, equating to 7/52 of 20 days holiday at 3 hours per day.

64 Did the respondent fail to pay the claimant for annual leave the claimant had accrued but not taken when their employment ended?

Unauthorised deductions of Wages

65 The Claimant was paid for all authorised overtime. On 25 September 2020, the Claimant was paid £43.20 (net) for the first two days of employment.

66 Did the respondent make an unauthorised deduction from the claimant's wages and if so how much was deducted? [The claimant's case is that she was owed unspecified overtime and not paid for the first two days of employment]

Breach of Contract

67 Was there a contractual provision between the claimant and the respondent that the respondent would pay the claimant for PPE?

68 Was that payment outstanding as at the termination of the claimant's employment?

69 Is the respondent in breach of contract?

Trade Union and Labour Relations (Consolidation) act 1992

70 Did the ACAS code of practice on discipline and grievance procedures apply?

71 If so did the respondent unreasonably failed to comply with paragraphs 9, 11, 13 and 26?

72 Is it just and equitable to increase or decrease any award payable to the claimant?

73 If so by what proportion of the 25%?

Declaration

74 What were the claimant's terms and conditions in respect of a probationary period and pay?

75 If the claimant has been subjected to any notified deduction what sum should the tribunal ordered the respondent to pay not exceeding the aggregate of the notified deduction is so made as limited by section 12 (3)-(5) ERA 96.

6. On the first day of the hearing there were a number of applications which needed to be considered and adjudicated upon. They were as follows:

    a) The Respondent's application to interpose one of their witnesses Ivelina Ivanova (hereafter Ivelina) so that her evidence could be heard on the first day. This application was refused because the need for this would have been understood some time ago and the application made well before today. We considered that it would have been unfair to the Claimant, who is represented by her Husband, to be forced to cross examine a key witness today when he could have had a reasonable expectation that her evidence would not be until much later in the hearing on the basis of the agreed timetable. As it turned out the witness was able to attend at a later

point and so there was no detriment to the Respondent's case by our decision.

b) The Claimant made an application under Rule 50 for there to be a Restricted Reporting Order and anonymisation on the public register in respect of herself and her husband. This application was refused. We balanced the conflicting rights and concluded that the Claimant had failed to provide a clear and cogent argument as to why anonymity should be given. There was nothing exceptional, in this case which in our view warranted a Rule 50 Order.

c) The Claimant made an application that she be permitted to take with her to the witness table notes she had made from the indicative questions sent through to her in advance of this hearing as a result of an Order at the CMH in November. The Tribunal decided that this was not a reasonable adjustment on the medical information we had but indicated that we had carefully considered the Equal Treatment Bench Book and would be closely monitoring whether such an adjustment was needed when the Claimant came to give evidence In the event it was not required.

7. In this Reserved Judgment we have not provided full written reasons in respect of these preliminary issues but if the parties require full written reasons in relation to any of these matters they can request them. It is hoped that will not be necessary.

8. It was agreed that at all material times the Claimant suffered from Dyspraxia and that she was a disabled person at all material times pursuant to the EqA for the purposes of this hearing. During the course of the hearing both in considering and implementing adjustments and when considering the disability discrimination claims we took into account the Claimant's disability impact statement and the medical evidence which had been supplied to us. We were also mindful that the Claimant's representative had his own medical issues to contend with and we sought to accommodate them as necessary too. In particular we:
   a) Took more breaks than we normally would;
   b) Had longer breaks that we normally would;
   c) Had shorter days than we normally would;
   d) Allowed the Claimant to take longer to answer questions;
   e) Allowed the Claimant to take a pad and pen with her to assist in the answering process
   f) Allowed the Claimant's representative longer time to prepare for each stage of questioning / submissions.
   g) We also considered and implemented where required the adjustments suggested at previous hearings.

9. We had a bundle of documents to which was added a few pages at the Claimant's request. Initially the Claimant wished to add a large body of additional documents but that was substantially narrowed when duplicates and irrelevant pages had been removed.

10. We heard oral evidence from the Claimant and her Husband (Mr Lovell) in support of the Claimant's case. They had both provided long statements which in turn cross referred and incorporated information from the equally long Claim Form. The Claimant's statements were granular in their attention to detail.

11. For the Respondent we heard oral evidence from Mr Killone, the Company Director and Ms Ivelina Ivanova, who was a shareholder in the business and Operations Director (the Claimant's manager). We also had the benefit of their witness statements. All witnesses were cross examined and at the end of the evidence he had closing submissions from both parties.

The Facts

12. On 20 September 2020, the Claimant saw an advertisement offering cleaning vacancies in her local area at GP surgeries. The pay was £9 per hour working Monday to Friday on evening shifts. The Claimant applied for the role late on 21 September and received a reply the following morning inviting the Claimant for an interview the next day.

13. The interview was conducted by Ivelina Ivanova (hereafter Ivelina) who was accompanied by her mother Iliana Ivanova (hereafter Iliana). We have utilised the first names in order to avoid confusion between the two Ivanovas and intend no disrespect in so doing. It is how they were referred to in the hearing by consent. The Claimant provides an account of the interview which has not been challenged. The interview was not an in depth one and we deduce both from the nature of the interview and the fact that the Claimant was asked whether she knew anybody else who might be interested in the job that the Respondent was in reasonably desperate need for staff to fill these new contracts. Later that evening the Claimant was offered the role and as asked whether she could start the following day.

14. The Claimant's first day of work was 24 September 2020. There was some paperwork to fill out and the Claimant asked to take that home as there were some details that needed to be inserted that she could not recall. In the Claimant's statement (para.13) the Claimant asserted that Ivelina told her that she could leave the medical history blank. The Form requests the employees medical history on the basis that ***"we need to be aware of to aid your safe working conditions"***. Ivelina's evidence was that she did not give the Claimant that indication and that it was down to the Claimant to fill in the form accurately.

15. Ivelina provided the Claimant with some information in relation to the tasks the Claimant was to undertake and we have seen written cards which detailed the areas and what was required to be cleaned and at what regularity. The Claimant was given a tour of the facility.

16. On 25 September before coming into work the Claimant filled in the necessary forms and discussed the medical section with Mr Lovell, her husband. She stated to her husband that Ivelina had said there was ***"no need"*** to fill in that section and she explained that she believed that it was only for serious conditions, and so made no entry. It appears from the Claimant's statement that she did give thought as to whether to enter her dyspraxia but declined to do so having weighed all matters up.

17. The Respondent were still looking for a third cleaner to clean the facility and soon after the Claimant started she was asked whether she would do extra hours to cover for that extra cleaner. She had been engaged to do three hours a day five days a week. The suggestion was that she should do 4.5 hours a day until a new cleaner was found. The Claimant agreed to do this overtime.

18. The other cleaner was an individual called Max. He was not a Bulgarian national nor was he disabled. The Claimant had seen him previously when attending the surgery as a patient and he had been there for some time employed by previous contractors. The Respondent disputes that Max ever became their employee. We have not heard any evidence from Max, nor have we seen any documentary evidence about his employment pre or post the Respondent taking on the contract.

19. Max gave the Claimant some pointers in respect of the job they had to do and it is asserted that on 28 September (the Claimant's second working day) that he complained that the Claimant was working too slowly. Later in the shift Ivelina came in and checked some of the Claimant's cleaning which was deemed good. The Claimant asserts that she said to Ivelina on that day that ***"one thing I worry is I'm too slow because I have dyspraxia"*** . She asserts that Ivelina told her not to worry and the Claimant explained what Max had said to her about her speed and explained she was concerned he was not happy with her as she was not doing her fair share in his eyes (para 31). Ivelina said she would have a word with Max. The Claimant's account, re her discussion with Max, appears to be supported by an email sent on 26 October 2020 (267). In that e-mail Ivelina stated that:

"A few weeks ago, Max told Daisy (the Claimant's nickname) that she is too slow and she got offended. That was the day I did Max's training on the Red Folder and I gave attention to the part on the Red Folder for "Positive Work Environment". I asked him to be positive to everyone in the surgery".

20. Late on that evening (28 September), the Claimant contacted Ivelina by phone with a query and in the course of that it was indicated by Ivelina that the Claimant would be paid for 5 hours work that evening. In a later call on 30 September during the Claimant's first week of working Ivelina agreed to pay the Claimant for 4.5 hours a night over the course of that first week. We note that would amount to a daily total for the Practice of 9 Hours, with Max doing the other 4.5 hours.

21. On 2 October, the Claimant contacted Ivelina to explain that the fridge alarm was going off in Room 7 of Hook Surgery which indicated that the temperature in the fridge was too high. The Claimant states that there was a conversation at some point and she was told not to worry and it was normal. In oral evidence Ivelina states that she visited the building to check the situation. That was not contained in her evidence provided before the Tribunal started.

22. On the second week, a new member of staff started on 5 October (Ms Karanova (Petya), who was of Bulgarian nationality, the same as Ivelina. The building was split into three areas to clean. The Claimant was assigned the Hook Surgery areas as she could not work in the Chessington part as she was a patient there. Petya worked the Chessington area and Max worked the upstairs area, which he had always done. The Claimant has asserted that she was assigned an unfair portion of the available cleaning work whereas Ivelina when questioned stated that she considered the work allocation to be broadly fair and that, if anything, she thought Petya had more to do as she had more toilets.

23. The Claimant in her statement suggested:

    a) She had 19 rooms, 7 toilets plus corridors with more objects
    b) Max had 17-18 rooms plus 4 toilets but in lesser traffic areas
    c) Petya had 9 rooms of which 2 were larger offices, 2 toilets and 2 showers plus corridors
    d) The Claimant had further to go the cleaning storeroom.

24. The Claimant's statement was very detailed in respect of this part of the Claim and was not subjected to any more than a broad challenge. We conclude factually that the Claimant did have slightly more to do than the other two but the difference was minor. The Claimant was allocated that part because Max was doing the part he had always done and the Claimant could not do the part of the surgery where she was a patient so that was given to Petya. We also conclude that there would have still been sufficient time to do the work allocated to the Claimant in the time allowed by a cleaner working at a reasonable speed at a standard that was acceptable.

25. On 5 October there was a conversation between the Claimant and Ivelina in respect of the waiting room toilets when the Claimant disclosed that Max had done those toilets as he had finished his own bit and he often did extra as he claimed to be quick. Ivelina said ***"You should do your own part because Max already has one third of the building . It is unfair to Max***". Later on, in the conversation the Claimant was reminded to do her own part of the building. The Claimant believed this to be unfair as she had consultation rooms to do and there was a longer walk to clean the waiting room toilets. It is noteworthy that these were the reasons given by the Claimant on her own evidence about why she was unable to do all of her part within the time. It was not stated that her dyspraxia was causing her any issues with the speed of her cleaning.

26. On 8 October, the Claimant was sent a letter by Mr Killone (241). The letter was effectively a welcome to the Company and an indication that an online HR system was to be implemented allowing, among other things the Claimant to clock in and out.

27. The Claimant asserted that there was a lack of cleaning equipment which caused delays in cleaning (para 29) and it is clear that this potentially would have had an effect on all the cleaners if correct. The Claimant bought a dustpan and brush to assist her with her work. The Claimant also described an occasion when Max had not put the mops back in the right place which caused the Claimant to finish late. Again, we find that whilst there were issues with equipment these were relatively minor and were the same for all cleaning staff.

28. The Claimant asserted that on 12 October she was told to clean faster by Iliana. The Claimant stated that she was cleaning to standards which she had been taught in Hong Kong. Iliana was of the view that this was in excess of what was required for this particular job and suggested that the Claimant's exacting standards was the reason why the Claimant was taking too long. Again, this is another reason for the lack of speed that does not seem to be caused by the Claimants dyspraxia.

29. The Claimant states that around mid-October Dr Baikie of the GP Practice was "slightly annoyed" and queried the chemical the Claimant was using for sanitising a metal trolley. The suggestion by the Claimant is that Ivelina had given the Claimant the wrong spray to use.

30. On 14 October Ivelina asked the Claimant why Max was finishing first all the time. The Claimant stated that it was because ***"the doctor/nurse rooms had more tasks to do than the other parts"***. Also, she stated that ***"the trolley was not big enough to carry everything the Claimant needed for her cleaning round safely"***. Again, we note that the Claimant's

contemporaneous answers were linked to facilities and the rooms she had been allocated as opposed to any thing being caused by her dyspraxia.

31. On the information presented Ivelina asked Petya to assist the Claimant for a day or so which pleased the Claimant. We are not satisfied that this added assistance was given because of the Claimant's dyspraxia as all conversations at the time were about the size of the Claimant's cleaning task, her attention to detail, and lack of the correct equipment to get the job done and not her dyspraxia. It was given because of concerns the Respondent held about the speed of the Claimant's work.

32. On 15 October, the Claimant called Ivelina to ask about certain items which were required. She asserts that Ivelina did not call back but did respond to Petya just afterwards when Petya called her. Ivelina in her oral evidence had no specific recollection of this call but indicated that if she did not take the call there must have been a good reason for it such as being busy doing something else. We form the view that the most likely explanation was that the Claimant was making a lot of calls, some very late at night, for reasons which were often of minimal importance. We can fully understand that, although the transcripts of the calls suggest that Ivelina was polite and as helpful as she could have been, Ivelina may have felt a sense of foreboding when yet another call came through from the Claimant and from time to time formed the view that she did not really want to pick up. When Petya called straight after she was prepared to pick up as it was validation that the cleaners needed some assistance. We accept that there was a difference in treatment but it had nothing to do with either the Claimant's disability or race.

33. On 16 October Ivelina sent a text message saying (247):

"Hi Daisy, I hope you are well. From next Monday please go back to working the area I told you at the beginning (the two corridors and toilets next to the waiting room). Petya will clean her area. Also, please try to finish your job in the three hours every evening. Many thanks have a nice day."

The Claimant replied that she would do her best. In her statement at paragraph 68 the Claimant stated that Petya spoke to her and told her that Petya's cleaning had also been criticised by Ivelina and she did not seem happy with Petya. The Tribunal considers that this is evidence that whoever it was, if the job were not being done to Ivelina's satisfaction, she would communicate that fact.

34. We are satisfied that the focus of Ivelina and her mother was to simply get the job done to an appropriate standard in the time given for it. They were not in a position to pick and choose staff, as stated previously they had been desperate to fill roles. We find that regardless of disability status or nationality

good work would be accepted and bad work would be commented upon with a view to improvement being made. The quality of the work was their sole driver.

35. Further at paragraph 68 of her statement, the Claimant comments that when her and Petya stopped working together efficiencies were lost because of her trolley not being big enough and bags split causing further lost time. She also said that there was only one set of sink cleaning / polishing equipment so that she had to go and find Petya when she needed it which also slowed her down. Again, these are all systemic errors /inefficiencies causing delay as opposed to the speed of operation being anything to do with the Claimant's dyspraxia.

36. The Claimant gave evidence of another occasion in the middle of October when Ivelina helped the Claimant to finish her work. Ivelina then gave the Claimant a lift home (para 73 of statement). Ivelina asked the Claimant why it was that she struggled to finish, on a normal night, her cleaning in 3 hours and further that weekly tasks would need to be added in once a week. The Claimant did not raise her dyspraxia but went through the list of tasks she had to do essentially suggesting that it was the heavy workload which was the problem.

37. At 249 of the bundle there is a letter dated 19 October on headed paper addressed to the Claimant from Mr Killone which read as follows:

" ***Re probation review meeting. You are required to attend a probation review meeting to be held on the 22 October 2020 at 1830 at the Merritt Medical Centre. The purpose of this meeting is to give you the opportunity to raise any concerns or provide an explanation for the following matters of concern: Timing issues for carrying out sufficient tasks.***
As per the procedure you have the right to be accompanied by either a work colleague or an accredited trade union official. I will be accompanied by Ivelina Ivanova (Operations Director) who will make a written record of the meeting. I would like to take this opportunity to remind you that as this matter is still under review no decision has yet been taken as to whether this will progress to a disciplinary hearing. If you have any questions in relation to this letter you should contact me in the future."

38. The Claimant's position is that this letter was not received by her. We accept that evidence because we find it inconceivable that she would not have challenged it in some way if she had have received it. The suggestion that she might be subjected to a disciplinary process would have sent the Claimant into a tailspin, which she would have immediately commented upon. The Claimant also put forward that the letter was not even sent. Mr Killone stated that he

was sure that he had sent it and we will return to this key issue of fact later in this Judgment.

39. On 21 October, the Claimant called Ivelina at 1308 (250-254). The phone call lasted 15 minutes according to the transcript which has not been challenged. Ivelina was not aware that the call was being recorded. Key components of that call were as follows:

    a) The Claimant complained about Max and the fact that he had not been working his full three hours and he had worked as little as 1 hour 50 minutes on one occasion. He said that he had done all tasks but the Claimant asserted there were many matters he had not undertaken.
    b) When Max had helped her in the past the Claimant had become concerned and gave examples of Max not doing that work properly.
    c) The bulk of the talking is done by the Claimant and she goes from one criticism of Max to another criticism.
    d) Ivelina raised a matter in passing for the Claimant to be a bit quieter when other people were still working in the surgery and the Claimant acknowledged that somebody had not been happy about the noise the previous evening.

40. On 22 October Mr Killone attended at the Practice and had a meeting. He asserted at this hearing that it was a Probation Review which followed on from the letter he had previously sent. The Claimant asserted that there was a meeting with her, Ivelina and Petya and a separate meeting with Max. She asserted that there was no mention of probation, discipline, or poor performance. Mr Killone introduced himself went through the new HR system and thanked the Claimant for her work. He also explained the purpose behind the clocking in and out system. The Claimant's account at the Tribunal of this meeting was as recorded in her later email of grievance on 16 November.

41. In the bundle at (260) is a letter to the Claimant from Mr Killone dated 23 October 2020. The Claimant insisted that she did not receive this letter and we accept that she did not. The letter read so far as is relevant:

    "Thank you for attending the Probation Review Meeting on 22 October at 1830 in Merritt Medical Centre.

    The purpose of the meeting was to give you the opportunity to raise any concerns or provide an explanation for the following matters of concern: Timing issues for carrying out sufficient tasks.

    Firstly, you had mentioned being frightened by a previous employee who told you were too slow and on another occasion shouted "teamwork" at you as he passed the room you were working in. At the time we asked Petya to work in nearby rooms across the passage to

ensure you felt safe. Once these teething issues have been resolved Petya will go back to her own area and you will continue in yours.

During the meeting we discussed timings and methods of cleaning different types of clinical rooms (consulting treatment and minor OPS rooms). We also discussed communal passages and toilets. Using the trolley to hold individual doors instead of going around first and using chairs to hold all the doors open.

You said you understood and agreed that you were over-cleaning every room as though they were minor ops rooms and not leaving sufficient time to manage all the rooms in your area and with a little more training you will be able to adapt.

Ivelina asked if we could review your probation period in another month because she likes you and gets on well with you. She said you are a good worker and she would help you over the next few weeks adjust your cleaning to meet all daily and periodic requirements as listed in the room cleaning schedules. Petya also offered to help you for a couple of weeks.

I have therefore agreed to your probation period being reviewed / extended for up to a further four weeks on the condition that you fulfil all cleaning requirements in your area on time and at a good standard."

42. The reason why we accept the Claimant did not receive this letter is because the contents of it were fundamentally different to the account of the meeting the Claimant has given us at this hearing and we consider it inconceivable that she / her husband would not have commented upon the letter and what she considered to be its' inaccuracies had it been sent. Again, we will return to the issue of whether it was actually ever sent in due course.

43. On 23 October, the Claimant states that she was worried that Max was going to do some of her cleaning and she told him he did not need to clean the toilets. In the ET1 the Claimant simply said that Max shouted at her but gave no particulars. In the witness statement the Claimant states that Max angrily shouted ***"This is teamwork is it! We need Teamwork! What is teamwork"***. The noise was such that one of the doctors was forced to shut her surgery door.

44. The Claimant spoke to Ivelina about this incident on 26 October when the Claimant called Ivelina (264-266). The transcript has not been challenged and in it the Claimant clearly identifies the day that Max said these words (or an approximation of them) being Friday 23 October. Ivelina said she would speak to Max and would also inform Mr Killone. This she did on 26 October 2020 and it is clear that her communication relates to the same incident. Ivelina

went on to say to Mr Killone that the Claimant did not like working with Max (feeling stressed) and also that he forgot to clean some surfaces and that he forgot to turn off lights. These were the complaints made re Max in previous discussions.

45. The problem for the Respondent is that the issue re shouting Teamwork is included in the letter allegedly sent on 23 October by Mr Killone. The evidence we have shows that he was not appraised of this incident until 26 October. This evidence demonstrates that the letter of 26 October was never sent and we find that it was created at a later date post termination. We sought evidence of when it was created from the Respondent on this important issue but we were told that the Respondent had not been able to locate the original. We will return to this in due course.

46. On 29 October there was a follow up email in respect of the HR system to all staff which again shows the names of staff and the wide group of nationalities (English, Hong Kong, Spanish , Polish , Bulgarian etc.) that made- up the Respondent's staff.

47. Also, on that day the Claimant asserts that Ivelina and Illiana harassed her at work by creating additional tasks by dirtying floors the Claimant had already cleaned and confused the Claimant by giving conflicting instructions. We do not accept they did this. As previously stated their only concern was to get the job done not make more cleaning to do They asked the Claimant to move needles and their containers to clean underneath and that the Claimant was using too much chemical for the floor cleaning. We consider that it is likely that they did do these things as it is consistent with getting a thorough job done. . Ivelina was allegedly taking photographs which provided an unfair perspective of the Claimant's work. Ivelina may well have been taking photographs in order to be able to have evidence if required at a later stage of the Claimant's failings. The Claimant was told by Petya that Max would not be coming in the next day because his cleaning work was unacceptable. The Claimant states that she mentioned about her dyspraxia on this day, although was not specific about in what context. We will return to our finding upon her communication of her dyspraxia in due course.

48. The Respondent has contended that Max was never the employee of the Respondent. He was the existing cleaner from the previous contract but he was working cash in hand and wanted to continue to do that and did not provide a national insurance number or other documentation to enable him to start with the Claimant. It is asserted that he continued to be paid by the old contractor. There is no written evidence to support any of this.

49. On 30 October, the Claimant stated that she was worried about her job and so took a video of the cleaning storeroom. The Claimant got struck by a falling

object which caused her a minor injury and a repair to be needed to her spectacles.

50. The Claimant returned to work on 2 November and on that day the new online HR Apps went live as had been previously intimated. The Claimant said that she felt highly unsettled by this. The Claimant took photographs at the start of the shift of what she considered were health and safety issues and took more on 3 November. It appears that the Claimant was gathering evidence for some future purpose

51. On 4 November, the Claimant prepared some questions for Ivelina relating to issues of concern, including the accident on 30 October. Those are at 297. The Claimant accepted that it was never sent to the Respondent. That document:

    a) Raised a number of questions about the correct methods for different aspects of the cleaning.
    b) The fact that her glasses had been broken.
    c) "you should already know as I mentioned when I started that I have dyspraxia which makes remembering everything you told me in the first evening three hours training difficult."

52. The Claimant called twice on that evening but Ivelina did not reply. Ivelina in evidence could not recall the reason for that but simply pointed out that she was very busy and not always available to take calls. At 1856 on that day, she sent an email to all the cleaners stating that a one-month Covid lockdown was being put in place the following day but work would continue as usual and she provided a letter of Authority.

53. There was a discussion later that evening. The Claimant expressed the view that she was struggling to do the cleaning to the standards expected in the three hours ***"due to the very high unfair workload"***. Again, it is noteworthy that the Claimant did not mention her dyspraxia or suggest that was a reason for not finishing. The Claimant mentioned she had also suffered weight loss. The Claimant asserts that Ivelina made unfair comparisons with other staff from other smaller centres cleaned by the Respondent. We do not agree that she did. The Claimant told her about the damage to her glasses and Ivelina said she would speak to Mr Killone about paying for new glasses. From the picture of the damage new glasses would not have been required, and indeed, in due course, the repair was affected at no cost.

54. On that same day, the Claimant told Dr Baikie from the surgery that she could not do the floor polishing as Max had done because of not having enough time to do so. Petya came over as she was concerned about the Claimant speaking to the doctor (the client) about this and Dr Baikie said she would communicate with the Claimant's manager.

55. The Claimant asked Ivelina about Max and was told that Max had been dismissed for a failure to communicate and lack of teamwork.

56. The Claimant looked at the safety information / training folder on 6 November and took pictures of the same. The Claimant asserts that there were a number of errors she was able to identify.

57. On 11 November, the Claimant's cleaning was checked by Illiana and the Claimant was able to finish her work on time although she stated that she was exhausted.

58. On 11 November at 2125 Ivelina emailed Mr Killone stating the following:

    a) That Petya had told Ivelina that the Claimant had had a second argument with a doctor and that there was shouting on both sides.
    b) The doctor complained that the Claimant was using dirty water and the Claimant explained that she did not have time to change the water and she did not have time to do the work in the time allowed.. The doctor wanted to speak with management about the issue.
    c) Petya had been helping the Claimant with her work each day and felt that she was ***"earning half of her (the Claimant's) salary"***.
    d) She indicated that Petya had reported that the staff at the centre were not being very nice to the cleaners after the incident at (a) above and not replying to the cleaners when they said hello.
    e) Ivelina had found somebody who could start on Monday and she felt that there was no choice but to replace the Claimant because of all the previous help she and Petya had given the Claimant in the past to no avail.

59. On 12 November Mr Killone spoke with Practice Manager Ms Abdi. We have not heard any evidence from anybody at the surgery during this hearing. His account is that he was told that the Claimant was unprofessional, intolerable, and unacceptable. She gave examples of how the previous day the Claimant had argued with the Practice Nurse about the cleaning of a sink and there had also been an argument with Dr Baikie about using fresher water for the floors. In his statement this incident is said to have been on 12 November but it appears to be the same incident reported by Ivelina which appeared to have happened a few days earlier. It was then suggested that the Claimant had refused to clean the toilets as she was a patient at the surgery. Mr Killone's statement says:
    "I explained that we had provided further training for the Claimant which was not being followed and so we agreed I would dismiss the Claimant".

60. Mr Killone thereafter instructed Ivelina to go to the surgery and to dismiss the Claimant ***"with immediate effect due to her probation being***

unsuccessful". He also told her to get the keys and the alarm fob from the Claimant. We accept the Respondent's account of how the dismissal came to be.

61. It is agreed that there was a discussion and the Claimant has set out in some detail her recollection of that conversation in her Claim Form which has been incorporated into her statement. There was no challenge to the accuracy of the conversation the Claimant set down and she indicated that it was written as soon as she got home. The reason given by Ivelina was the Claimant's difficulties about finishing on time and so she was not suitable for the job. The Claimant raised health and safety issues, not having the right equipment and her dyspraxia and that her dismissal ***"abused the Equality Act 2010"***.

62. It is noted in the Claimant's account that knowledge of the Claimant's dyspraxia was immediately denied by both Ivelina and her mother. There was an argument about how much training the Claimant had been given. It was made clear that the Claimant did not need to return to work and the Claimant's keys were removed. Ivelina was asserting that the Claimant could be dismissed in the way that she was if she were in her probation period. The Claimant was persistent in her understanding of her rights and at one point called her husband and we have seen a transcript of that discussion which has not been challenged. In that the Claimant repeated the reasons she had been given for her dismissal and ***stated, "I tell them I have dyspraxia; they argue with me I didn't say"*** (sic). It is agreed that the Claimant will come home and that they will contact a solicitor. The Claimant leaves the premises.

63. At 2204 on 12 November the Claimant wrote to Mr Killone asking for confirmation of the reasons for dismissal and that she could not open her payslip as it was password protected.

64. The following day the Claimant, via her husband, contacted a legal advisor linked to her home insurance. They discussed the issues and told the Claimant to raise a grievance which she did, again with the assistance of her Husband. As the contract said that she should be given written notice, it appears she was advised that she was still an employee. On the evidence we have heard we disagree. We consider that the Claimant was dismissed in an unambiguous way the evening before and she herself had known that because she asked for the reason for her dismissal. The dismissal may have been in breach of the contract in that it was given orally, but her dismissal was still effective as of 12 November.

65. The Claimant sent her grievance at 1824 on 13 November (360-362). The grievance states at the top that it is with regard to:

"Working conditions, management health and safety, and other reasons as set out in this e-mail".

The Claimant goes on to detail:

a) Two accidents at work.
b) Various illnesses and injuries she has sustained at work because of various acts and omissions allegedly by the Claimant.
c) A list of health and safety issues that she contended had not been dealt with.
d) Management, bullying and harassment issues.
e) That the Claimant had been discriminated on account of her disability (dyspraxia) and on account of "race and sex".

66. Presumably because of the advice that she had not been dismissed the Claimant attended at her workplace on the evening of 13 November. Petya was present and contacted Ivelina and her mother to attend when she saw the Claimant was there. The Claimant had used a key code on one of the doors to enter the surgery. We are satisfied that the Claimant had no right to be in attendance at the surgery on that day as she was no longer employed. The Claimant asserts that Ivelina and Illiana were threatening in their demeanour and actions. They accept that they sought to prevent her from moving further into the surgery. There is a recording of the incident and again the transcript in the bundle (364 et seq) has not been challenged. All parties knew they were being recorded. Previous to this discussion the Claimant had been gathering evidence by filming matters which she considered to be a health and safety risk.

67. The conversation was not an easy one. The Claimant threatened to call the police and then did so. The issue about whether Ivelina knew of the Claimant's dyspraxia was raised again with both parties maintaining their previous positions. After a frank exchange of views, Mr Killone was called and indicated that he had only just received the Claimant's correspondence i.e., her grievance. Mr Killone stated as follows:

> ***"OK I'm looking at your e-mail now but the problem is when I came to see you on the 22nd of October that was nearing the end of your probation period. Do you remember me saying we have to improve and get quicker at the jobs you were doing including cleaning the toilets. Now you have 1/3 of the building the other two ladies are both doing their work. Your cleaning is very, very good. We're not saying it is not very good. What we're saying is it's not quick enough. That's all. So, when we extended your probation. We did say we would review it weekly. But then there's a few things that came to light when you said you were stressed and you're losing weight etc., I thought this is affecting your health. So, we can't continue to put your health at risk so because it's an extended probation….."***
>
> At this point Mr Killone is interrupted by the Claimant and he does not finish his train of thought. He asks the Claimant to leave the building and she agrees and does so.

68. On 15 November, the Claimant made a complaint to the police about the conduct of Ivelina and Illiana which was described as threatening and that they intended to cause violence. Having spoken to the supervisor the police stated that they were not going to complete a crime report as it appeared to be a civil dispute.

69. On 16 November, the Claimant raised a further grievance about the conduct of Ivelina and Illiana in writing (375-376). She stated that she still considered herself employed until the dismissal was in writing. She also set out her view of the meeting on 22 October and in particular that the Claimant's performance was not mentioned at all and nor was extension of probation.

70. The Claimant on 16 November also wrote a note for the management of her workplace surgery explaining how she had been treated by Ivelina and Illiana and that previously they had not worn face masks.

71. Forty-five minutes after receiving the second grievance Mr Killone emailed the Claimant attaching a letter of dismissal (dated 14 November) and saying that he would investigate the grievances and would respond in due course. He stated that ***"as from today you will not be authorised to enter the building as an employee"***. We do not know why he said that but we assume that it was in order to absolutely ensure that there was written notice ending her employment. As we have already stated we consider she had been dismissed unequivocally on 12 November.

72. The letter of dismissal reads as follows (379-380):

> ***"I am writing to confirm the outcome of discussions at the probation review meeting that you attended on the 12th of November 2020 with Ivelina and Iliana.***
>
> ***It was explained that the purpose of the meeting was to review your performance since you started your employment with us on the 24th of September 2020. At this meeting it was agreed both verbally and in writing (letter dated 22 October 2020) we would be extending your probationary period for a further three weeks. I clearly set out our expectations of you verbally and in writing in which you stated you understood what was being asked of you. One of the key objectives was to carry out the cleaning tasks in a timely manner.***
> ***During the meeting it was specifically discussed the issues that had been raised i.e.,***
>
> - ***not being able to meet the objectives set on the 22nd of October.***
> - ***Reports of you shouting at colleagues over the past few days and refusing to complete certain tasks.***

- ***Not listening to the additional training which had been given over the past three weeks but shouting over various people trying to help you.***

We then tried to adjourn the meeting so that we could review what we had discussed you started shouting at us angrily and blaming us for a whole array of issues.

On further discussion with yourself it was decided that you would fail to perform to the required standards during your probationary period and therefore had not successfully completed it.

You are entitled to 1 weeks' notice which will be paid in lieu together with any outstanding holiday pay due to you. Your P45 and pay advice will be forwarded in due course.

You have the right to appeal against the decision to terminate your employment. If you wish to appeal you should do so in writing stating the grounds of the appeal within five working days of receipt of this letter…

I regret that it has been necessary to take this action and wish you well for the future."

73. On 19 November 2020 Mr Lovell drafted an appeal letter indicating that the Claimant:
".. wished to appeal on the grounds of making protected disclosures (whistle blowing plus health and safety) as well as discrimination under the Equality Act 2010 on the grounds of disability and race."

74. There is an unheaded letter dated 24 October from Mr Killone. It is clearly wrongly dated as it refers to Mr Lovell's letter of 19 November. It invites the Claimant to an appeal hearing on 10 December at 4.30pm. It states that:

"As with your request to be accompanied at your grievance hearing we will also allow you to be accompanied by Mr Andrew Lovell if you so desire. The purpose of this meeting will be for me for you to discuss in full details of your termination in order that I can gather and consider all the relevant facts with a view to resolving your concerns".

The evidence of Mr Killone was that the correct date for this letter must have been 24 November but that must be incorrect. It must post date the 30 November because it was only in that letter (see below) that the Claimant asks to be accompanied at her grievance by Mr Lovell. It seems to be highly likely that taking into account certain similarities that it was written around the time the 4 December letter inviting the Claimant to Surbiton for the grievance hearing. The Claimant asserted that she had never received this letter and despite requests being made for the Respondent to provide metadata which

would show when the document was drafted the same was not forthcoming. There is no evidence of it being emailed or indeed posted.

75. On 29 November, the Claimant was, by email, invited to a grievance hearing at the Plymouth office at 0930 on 1 December. The purpose of the meeting was to ***"discuss info all details of your grievances grievance in order that I can gather and consider all the relevant facts with a view to resolving your concerns".***

76. The Claimant responded the following day asking for a copy of the Handbook which she asserted she had never seen. The Claimant expressed concern about travelling to Plymouth for the grievance hearing in light of Covid, her other jobs and her health and also asked that she be accompanied by Mr Lovell and that any meeting be recorded as a reasonable adjustment.

77. On 4 December at 1300 the Claimant made a further request for:

a) The Company Handbook:
b) Employers Liability Insurance Certificate;
c) The 22 October letter;
d) A response to the Claimant's appeal letter;
e) A response to the grievance appeal letter;
f) The password to access pay slips

78. There is a letter in the bundle at 399 which is dated 4 December 2020. It is a revised invitation to a grievance meeting to be held in Surbiton on 11 December. Mr Lovell was permitted to attend but there was no permission to record the meeting. The Company Handbook was attached along with the grievance procedure and the insurance certificate. The letter of 22 October was not supplied. We are satisfied that the Claimant did not receive this letter and the Claimant doubts as to whether this letter was actually ever sent at all.

79. In the letter Mr Killone writes as follows:

"Also enclosed is a copy of ….. your application form where you have wilfully omitted the medical history section and where you have wilfully omitted the doctor and practise information section."

The Tribunal cannot see that Mr Killone was in any position to form a view that the omission of that information had been wilful or not at that point. The Claimant had not been asked about it. Ivelina stated in her oral evidence that many staff do not have a GP and so the absence of information is not unusual.

80. Previous correspondence had been by email and on the same day as the Claimant emailed her chaser and the above letter there was email

correspondence between the Claimant and Mr Killone about her P45 with another email being sent on 5 December about the same issue.

81. On 7 December, the Claimant emailed about a discrepancy between the P45 sum and that which the Claimant had received.

82. We have seen an invoice which evidences that Mr Killone paid for a room at the hotel in Surbiton on 10 and 11 December. That does not, of course prove that he stayed there on those nights or even if he did it was for the purpose of dealing with the grievance. The invoice is dated 7 May 2021 so some six months after the stay. The Claimant checked in at 1632 on 10 December.

83. On 14 December, the Claimant was written to twice and was told that the grievance and her appeal had taken place in her absence as she had not attended. The Claimant asserts that there were not received until 18 December.

84. The Claimant's grievance was closed because the Claimant had not attended and that letter dismissing the grievance was received by the Claimant on 18 December (it is date stamped 16 December (417). The Claimant asserts that she never received the letter (414-415) relating to her appeal against dismissal.

85. On 19 December, the Claimant stated that she had not received notice of the hearings and asking for the rest of the documents previously requested. (418)

What was the reason for the Claimant's dismissal?

86. That is a key question in this case and not a straightforward one. The Claimant was asked in evidence what the main reason was for her dismissal and she answered that the main reason was her disability but also she believed that her race had something to do with it. It is noted that this is contrary to her section 103A claim wherein she needed to demonstrate that the principal reason for her dismissal was the protected disclosures she had made.

87. It is apparent that almost from the start the Claimant found it difficult to comply with what the Respondent wanted her to do and how they wanted her to do it. She was able to clean to a high standard and was at all times mindful of the standards that had been advised to her from her time in Hong Kong. At the outset, the Respondent emphasised quality of cleaning but even then there was a discrepancy between what they considered quality and the previous standards from Hong Kong. The problem was that the Claimant was overcleaning areas that needed less and at the same time was not always getting to the areas that really needed it in time.

88. The Claimant was required to undertake the cleaning work allocated to her within a three-hour shift. We are satisfied that that was an achievable target by the Claimant and certainly it would have been for another person. We find that the Claimant did not really heed the advice that she was given by her managers and preferred to do things her own way. We accept that there were issues which made it more difficult for her such as equipment not always being readily available but we still consider that had she focussed on what was required and what she was told to do her chances of succeeding would have been far better.

89. The Claimant was regularly given management advice and asked to work faster and so the Claimant would have been aware that whilst some aspects of her cleaning were deemed to be very good, the need to work more efficiently and more quickly was regularly raised and was a matter of concern for her managers.

90. Day to day matters were dealt with by Ivelina in the main and Iliana occasionally. Mr Killone geographically was at some distance. Further it is clear that HR was delegated to an outside contractor and there were no specific HR knowledge or skills in-house. Our view is that Ivelina tried to be helpful to the Claimant whenever she could and was, in the main, patient but with occasional lapses. We consider that Iliana (who did not give evidence) was less patient and in all likelihood more direct in her comments but both were issuing appropriate management instructions. It appears that from the time Max left that there was a greater concern and scrutiny about the Claimant's work but again that is understandable in the absence of improvement on the matters of concern.

91. We note that there is a probationary period referred to in the Handbook. We asked to see the Handbook that was in place at the date of the Claimant's employment but one was not provided and so we do not know if there was a similar provision in the earlier Handbook. The probationary period is not referred to in the Claimant's contract and the handbook is expressly stated to be non-contractual and so is advisory in nature. The Handbook we have states, and we find on the balance of probabilities that there was the same clause in place when the Claimant was employed, as follows:

"The first three months of your employment are served as a probationary period. During this your work performance and general suitability will be assessed and reviewed with you. Receipt of written confirmation will signify that your probationary period has been successfully passed. However, if your work performance is not up to the required standard or you are considered to be generally unsuitable we may either extend your probationary period or terminate your employment at any time before. We reserve the right not to apply our full disciplinary procedures during your probationary period."

92. It is the Respondent's case that due to the concerns about her performance the Claimant was asked to attend a probation Review meeting by way of a letter sent to the Claimant on 19 October 2020 (249). We are quite satisfied that the Claimant did not receive that letter because:
    a) The Claimant would have been terrified at the turn of events and the fact that her cleaning was the subject of concern and would have contacted Ivelina or Mr Killone about it immediately. She was not the type of person to take a sanguine view about either the allegation or the possible consequences.
    b) She would have immediately asked for her Husband to attend with her as her companion as she did subsequently.

93. Not only do we accept that the letter was not received by the Claimant we are satisfied that the reason why it was not received is because, contrary to Mr Killone's evidence, the letter was never sent to the Claimant and was created some time after the Claimant was dismissed. We have given reasons for this conclusion above at paragraph 45.

94. We do not accept the evidence of Mr Killone that there was an "official" probation review on 22 October. If there had been the Claimant would not have reacted so passively. Whilst it is conceivable that the speed of the Claimant's work was mentioned in passing at that meeting, there is no possibility that the Claimant would have reacted in the sanguine manner suggested and would not have communicated the outrage she would undoubtedly have felt about having a probation, that she said she did not know about, extended for reasons, she did not agree with, due to any issues being caused, in her view, from matters which lay at the door of the Respondent. We also note that Ivelina was there to take notes according to the letter, but no notes were ever provided which suggests she did not and was not told to because at the time it took place it was not a Formal Meeting.

95. We have already set out the concerns we have in relation to the Probation Review Meeting letter dated 23 October and the fact that it contains matters which were not raised by the Claimant until after the letter was sent. Our conclusion is that this letter was not received by the Claimant because otherwise she would have been outraged by the same and rapidly communicated her discontent. Secondly we are satisfied that this letter was not sent to the Claimant and was created after the Claimant had been dismissed. Mr Killone did this in order to "beef up" the procedures he had gone through in relation to the probation after the Claimant had been dismissed and was, inter alia, alleging discrimination.

96. We are satisfied, however, that even though this particular process did not take place as suggested by the Respondent, there were ongoing merited concerns about the Claimant's cleaning and in particular her failure to do the

work in the time which was for a combination of factors and in actuality the fault of both the Claimant and the Respondent. In particular it dawned upon the Respondent that if the Claimant were not capable of doing the weekly / daily tasks in time she would not be able to do the monthly / annual as they came around.

97. There was an uneasy period at the start of November and then Ivelina wrote to Mr Killone on 11 November reporting that she had been told that:

a) The Claimant had a further argument with a doctor which involved shouting;
b) The Claimant had been complaining to the doctor that she did not have time to do everything and the doctor wanted to speak with Mr Killone about this;
c) Petya was doing much of the Claimant's work
d) Petya had said the staff at the surgery were being less friendly to the cleaners and implicitly this is because of the Claimant.
e) She and Petya have tried to help the Claimant to no avail.
f) She had found somebody who could replace the Claimant from Monday.

98. As Mr Lovell observed there is no third-party corroboration of these complaints from the surgery staff but there is ample support from the Claimant's own evidence and the facts as found in support of them. We know there was an issue about a dispute with a doctor and an issue about dirty water. There was the occasion when a doctor had to close the door when Max spoke with / shouted at the Claimant. Further we know that help had been offered to the Claimant and that Petya was still helping the Claimant out. In the Tribunal's view that is sufficient for us to consider that the concerns were raised by the Surgery.

99. Ideally and in fairness to the Claimant there would have been an investigation into all these matters into which she could have contributed. Ivelina is clearly recommending that the Claimant be moved on and has secured a replacement. It is now down to Mr Killone to take a decision.

100. Even though we have found as a fact that Mr Killone has not been truthful about the probation matters we are satisfied that following on from the letter from Ivelina, he was contacted by Ms Abdi who did tell him that she considered the Claimant's behaviour to be intolerable, unprofessional, and unacceptable. We consider that whilst he should have spoken to the Claimant about it we also understand why Mr Killone may have thought he did not have much of a choice but to dismiss the Claimant. Undoubtedly the fact that she was not performing to standard and had had some input from Ivelina also contributed to his decision that she needed to be dismissed. He informed Ivelina to put that into place.

101. We find that the reason to dismiss the Claimant came about as a combination of the Claimant's inability to perform to an acceptable standard (speed) according to the wishes and needs of the Respondent and third-party pressure to dismiss. Also, a factor was the fact that there was a replacement ready to go. Whilst arguably, one can see that it was unfair not to provide the Claimant with an opportunity for a right of reply, we accept that the handbook indicates that normal disciplinary processes are not required for those in a probationary period. That was certainly in the mind of Ivelina in the transcript when dismissing the Claimant as she repeats that she is entitled to dismiss in this way within three months. The principal reason we consider to be third party pressure to dismiss as although we consider that the Claimant is likely to have been dismissed for capability in relatively short order it was the third-party concern that precipitated the dismissal on 12 November.

102. The Claimant was clearly dismissed on 12 November. Ivelina for reasons that we have not been fully able to understand told the Claimant that she had been dismissed for not meeting their standard and in particular her ability to finish the work in the time allocated. When Mr Killone spoke to the Claimant on 13 November he said that her cleaning was very good but it was not quick enough. He also indicated that the Claimant had said that it was affecting her health and then he is interrupted. We do not accept that the Claimant was told the correct reason for her dismissal at the time of her dismissal. The Respondent did not gain any advantage for this and there is no proper explanation given. Mr Killone may have been about to speak of other things when he was interrupted and it was a fraught call which also would have impacted onto what was said.

103. We find that the turning point in this case for Mr Killone was the letter of grievance from the Claimant on 13 November which was a protected act as well as a complaint about a range of matters. We do not think that he had taken any legal advice from his advisors as at the point of dismissal, nor when he had the conversation with the Claimant on 13 November. We find that Mr Killone who told us that he had not had anything like this before in his career panicked and after taking advice decided that he needed to put in place a few procedural safeguards to try and justify the dismissal in a better way. We consider that it was after receiving the grievance that he:

a) Created a letter that invited the Claimant to a probation meeting;
b) Created a letter that provided an outcome to that probation meeting;
c) The letter of dismissal dated 14 November.

Letters a) and b) were never sent but c) was.

Conclusions

Protected Disclosures

104. The first matter we have to establish is whether or not the Claimant did make protected disclosures and if so, who to and when. Our conclusion is that:

a) The alleged Protected Disclosures at 7.1 is a Protected Disclosure.
b) Part of the disclosures at 7.2 and 7.5 are Protected disclosures.
c) The disclosures at 7.3, 7.4 and 7.6 are not Protected Disclosures.

Our reasoning is set out below. We set out in full each of the alleged protected disclosures and our conclusions on each one is set out in bold italics:

7.1 On or about the middle of October 2020 the Claimant told Ms C Middleton, a nurse at the Hook surgery that the vaccine fridge alarm sounded on 02 October 2020 and she was concerned that it may have impacted upon the effectiveness of the vaccines stored therein?

We accept the Claimant's evidence that she did make a disclosure to Ms Middleton as set out in this paragraph. Whilst there was no evidence to corroborate it, there was also no evidence to dispute the Claimant's evidence on this point. We accept that it was a matter of concern to the Claimant and she had previously reported it to Ivelina on 2 October.

We have noted the care which the Claimant has taken during the course of this hearing in relation to protecting herself from touching surfaces which, aligned with her cautious approach and constant concern when things did not appear sufficiently clean in the surgery and her insistence on Covid protocols suggests that she takes hygiene / health and safety matters very seriously indeed.

We accept that it was a disclosure relating to a health and safety matter and we are satisfied that the Claimant held a genuine concern/belief that the health and safety of individuals may be compromised because of what she genuinely believed was a fault in the storage and also a genuine belief it was in the public interest as the public would be the recipients of the vaccines . We are supported in that by evidence that the Claimant and Mr Lovell went elsewhere for their Covid vaccines. It was not made to the employer but it was made to an employee of the surgery where the vaccines were housed and so was responsible for the vaccines. This satisfies section 43B and 43C (1)(b)(ii) of the ERA. This is a Protected Disclosure.

7.2 On or about 21 October 2020 the claimant informed her line manager Ms Ivelina Ivanova that a work colleague Max was not working his full shift and was not fully following the cleaning and disinfecting requirements?

It is agreed by the Respondent that the Claimant did provide this information to Ivelina. We do not accept that the disclosure relating to Max allegedly not working a full shift is a qualifying disclosure. It does not relate to any of the six sub sections of section 43B (1) ERA and the impact of Max not working his full shift only impacts upon the Claimant herself (and possibly other cleaners in the building) and we do not accept that she held a reasonable belief that this part of the disclosure was in the public interest.

Following on from the findings above re the Claimant's attitude to cleanliness we do consider that the Claimant did hold a reasonable belief that Max's alleged failure to clean and disinfect would endanger health and safety of users of the surgery and accordingly there was a wider public interest. We consider that the disclosure that Max was not fully following the cleaning and disinfecting requirements to Ivelina was a Protected Disclosure.

7.3 On or about 04 November 2011 the claimant told Dr Baikie at the Hook surgery that she was not given sufficient time to fully complete all her cleaning duties?

We do not consider this to be a Protected Disclosure. There does not appear, nor has it been suggested that there was a sufficient disclosure of information in relation to this and nor are we persuaded that it links into any of the section 43B (1) ERA subsections. Further we do not consider that it has been demonstrated that the Claimant made this disclosure on anything but her own behalf and we are not able to see any reasonable belief that the disclosure was being made in the public interest.

7.4 On or about 13 November 2020 the Claimant told Mr Kevin Killone and Ms Ivanova, by means of a written grievance that she had no key to the towel dispenser so could not fill it in a safe manner and had experienced bruising as she had insufficient time to fully complete her duties and her dyspraxia affected her coordination such that she hit or banged into objects, and there had been a breach of the coronavirus regulations?

This is the formal grievance set out between 360-362 of the bundle. This is a complaint that raises a number of health and safety issues and also that legal obligations have not been complied with. It is a personal complaint about the manner in which she has been treated and there is no sense in that document that there was any reasonable belief that it was made with any public interest dimension. It is not a Protected disclosure in our view.

7.5 On or about 13 November 2020 the claimant told the Practice Managers at Chessington Park and the Hook surgeries that there were health and safety issues because the light was not working in the cleaning storeroom, cleaning chemicals used on metal were potentially corrosive to metals, and the vaccine fridge alarm sounded on 02 October 2020?

We consider that part of the above (re the vaccine alarm) is a Public Interest disclosure for the reasons set out at 7.1 above. We do not accept that the rest are public interest disclosures. Whilst the absence of a light in the cleaning storeroom could have been a health and safety issue again we do not accept that there was any reasonable belief that the disclosure was being made in the public interest. The issue about the cleaning chemicals does not relate in our mind to a health and safety issue or any of the other qualifying disclosure categories at section 43A (1). We also see no reasonable belief that the disclosure was made in the public interest.

7.6 On or about 16 November 2020 the claimant told Ms Abdi, practice manager at the Hook surgery that Ms Ivanova, her manager, and her mother had stood close to her, blocked her exit, pointed at her with their fingers and further that they were both breaching coronavirus regulations in respect of the non-wearing of face masks?

This is not a public interest disclosure. It relates to a personal incident between the Claimant and her managers. Whilst the Claimant clearly considered that a criminal act had taken place and we accept that she held a genuine belief in that although the police took no action, the whole allegation is framed in a purely personal context about a specific argument the claimant had on a specific occasion. We do not consider that there was any genuine belief that the disclosure was being made in the public interest. Even the lack of face mask wearing is on this occasion to do with the Claimant's safety as opposed to any wider concern.

7.7 On or about 16 November 2020 the Claimant informed Mr Killone of the incident on 13 November 2020 involving Ms Ivanova, her manager, and her mother had stood close to her, blocked her exit, pointed at her with their fingers and further that they were both breaching coronavirus regulations in respect of the non-wearing of face masks?

The reasoning set out at paragraph 7.6 is repeated.

105. In summary the protected disclosures made were on our findings:

a) The disclosure in relation to the vaccine fridge in October.

b) On 21 October, the fact that Max was not cleaning and disinfecting properly.

c) On 13 November, the disclosure about the vaccine fridge to the surgery.

106. We are satisfied that none of these matters had any bearing upon the Claimant's dismissal let alone amount to the principal reason for dismissal. We have given our reasons for the dismissal earlier in this Judgment. The Automatically unfair dismissal claim, pursuant to section 103A ERA 1996, fails as the principal reason for dismissal was not any protected disclosure.

Whistleblowing Detriments

107. Seven alleged detriments remain from the twenty that were in situ at the start of the hearing. The Claimant's representative withdrew claims from time to time upon consideration of the evidence. Each of these detriments need to have been materially influenced by the disclosures which we have found above. We find that the Claimant has some evidential difficulties on account of who those the disclosures were made to and who it was who subjected the Claimant to the detriment.

108. There is no evidence at all that Ms Middleton ever communicated the alleged disclosure to any member of the Respondent's staff and in particular Mr Killone or Ivelina. If they did not know of the disclosure their actions cannot have been influenced by it. It is correct that the Claimant had disclosed the vaccine temperature to Ivelina on 2 October and that would have been a protected disclosure but it is not a disclosure upon which the Claimant seeks to rely. In any event even if the disclosure to Ivelina was the protected disclosure relied upon then Ivelina either took no action on it or came into check the temperature of the fridge. On balance we believe that she did the former. It was not a matter of importance for her. All the evidence we have is that Ivelina did not know about the alleged disclosure the subject of this claim and was wholly undisturbed by the matter on the Claimant's own evidence when she told her about it. We are quite satisfied that the disclosure at 7.1 had no bearing whatsoever on any of the detriments made

109. Similarly, there is no evidence that the Practice Managers after 13 November ever spoke to either Ivelina or Mr Killone about the disclosure made on 13 November about the fridge temperature (part of 7.5). We have no evidence that this protected disclosure materially influenced any of the detriments that post-dated this disclosure.

110. The only remaining protected disclosure on our findings is the one involving Max and made on 21 October re his cleaning and disinfecting issues. We have a transcript of when that disclosure was made (250-256). Ivelina is receptive to the Claimant's disclosure saying:

"I'm going to speak to him about staying the three hours, using all the cloths and do not forget anything he's doing. Thank you so much for telling me."

Later on, she says:

"Maybe it's difficult for him because he used to work alone and now he has to learn to work in a team."

111. We note that Ivelina receives the information positively and resolves to discuss matters with Max. There is no indication that she has any hostility towards the Claimant for making the disclosure. This is consistent with our general finding earlier that Ivelina simply wanted the work done to a decent standard and anything that pointed in that directions was important for her.

112. On 22 October Petya reported that Max had come in to say goodbye but she thought that he was checking to see if they were still there at 2130. On 26 October Ivelina reported the fact that the Claimant had had some issues with Max to Mr Killone and Max was dismissed shortly afterwards. There is no suggestion on the face of the evidence that either Ivelina or Mr Killone had any concern about the Claimant making the disclosure about Max which in the end led to him leaving.

113. From the above we are quite satisfied that the allegations set out at 17.11, 17.12, 17.16, 17.18, 17.19 or 17.20, whether factually true or not, are not linked to the protected disclosure in any way. The extent to which they are factually accepted will be set out when considering the same allegations as acts of discrimination but because of the clear lack of any negativity in relation to the protected disclosures we find that any actions of either Ivelina, Illiana or Mr Killone were not influenced in any way by the protected disclosure about Max's failings and we dismiss them.

114. The only allegation that we need to consider in more detail is the allegation at 17.9 which reads as follows:

"On or about 23 October 2020 the Claimant was shouted at by Max. (It is not the words spoken but the tone of the voice that is objected to)".

This would have taken place around two days after Protected Disclosure at 7.2.

115. The Claimant made her allegations against Max. Ivelina listened and told the Claimant that she would speak with Max and we know that Max had a

meeting with Ivelina and Mr Killone the following day on 22 October. Then on 23 October the Claimant describes the following in her statement (para. 79):
"I saw Max was cleaning the patient's waiting room. I (was) worried he would go to clean the waiting room toilets again so I talked to Max. I said calmly "You don't need to do the waiting room toilets cleaning". Max was suddenly very angry shouting, "this is teamwork is it? We need teamwork! What is teamwork! ..... I felt his emotion was already not in control"

116. It is clear from the way she responded to the Claimant's complaint that Ivelina perceived it as an issue of Max failing to be part of a team and as she subsequently reported it to Mr Killone she accepted the Claimant's account. Further, Ivelina confirmed at paragraph 20 of her statement that she asked Max to be positive to everybody in the surgery and so it appears that she did raise issues with him although it is not clear what precisely was said.

117. We have not heard from Max and so do not have his reasoning why it was that he uttered those words in the tine he did to the Claimant. We consider that the Claimant has an accurate recollection of Max's words and although we find that she has a low tolerance level for conflict and that there is likely to be some level of exaggeration, consciously or unconsciously, the fact remains that we are satisfied that it was a detriment and we are satisfied from the evidence that Max acted in that way because of, or at the very least significantly influenced by, the protected disclosure that had been made to Ivelina which was then conveyed onto Max i.e., that Max was not working to a level which was acceptable from a health and safety perspective.

118. That is not the end of it because the Respondent's contention is that Max was not an employee / worker. It was acknowledged in Mr Killone's statement that Max had been working alone for the previous cleaning contractor but ***"ultimately did not transfer across to us but continued working for the previous contractor"***. In oral evidence Mr Killone explained that Max was working for cash and could not provide a NI number and so Mr Killone did not, or was not able to, take him on. No documentation was produced in relation to taking over this contract and it was suggested that the old contractor was deemed unsatisfactory and that for the first 30 days (the cleaning contract notice period) the Surgery would be utilising two companies to deal with the contract. It is possible that Max was being paid via his old contract for that period and the Respondent were effectively sharing the load but we do not accept that the Respondent has provided sufficient evidence for us to be satisfied that was the case. They should have any paperwork and be able to be in a position to make good their suggestion that he was not their employee / worker but they have not done so.

119. A further problem for the Respondent was that even if that were the arrangement, it would only have lasted 30 days and then the old contract expired. At that point in time the Surgery would not be paying any further monies to the previous contractor and so there would be no money to pay Max via that source. There was no clarity as to when precisely the cleaning contract was taken over and it should have been straightforward for the respondent to provide that information. The best we have is that it started 1-2 weeks before the Claimant started which would be 10 or 17 September. 30 days from the latest date would have been 17 October and Max remained after that date.

120. All of the contractual information should be within the grasp of the Respondent but no paperwork was provided at all. We know that Max continued to work until 29/30 October when Mr Killone suggests that he resigned. We note that both Petya reported to the Claimant and the Claimant heard from Ivelina that he was dismissed because of his cleaning ability and / or lack of teamwork. We prefer the latter evidence.

121. It certainly appears from us that the Respondent had day to day control of the Claimant throughout the whole period. The area he was assigned was determined by the Respondent, the standards of cleaning were determined by the Respondent, he was managed by Ivelina and was cautioned when he had spoken out of turn. At paragraph 19 of Mr Killone's statement he records that ***"Ivelina pointed out to Max the section in our employee's handbook …. The section on positive work environment and asked him to be more positive to everybody in the surgery"***. It is clear that she was actively managing him.

122. We can only go on the evidence that we have had given to us. The evidence suggested to a large extent that Max was one of the team working on a daily basis to clean the surgery. What he did daily including the supervision of him would lend us to the conclusion that Max was an employee / worker of the Respondent at the material time. Accordingly, we find that the allegation at 17.9 is successful as Max an employee or worker of the Respondent subjected the Claimant to a detriment on 23 October 2020.

Discrimination Arising from Disability

123. There is a live issue concerning whether the Respondent had knowledge that the Claimant was a disabled person and, if so, at what point. The Claimant's position is quite clear. She states that she told the Respondent that she suffered from dyspraxia and that it may impact upon her speed of work as early as 28 September 2020. This is the first occasion that the Claimant states she disclosed it. Ivelina denies that this was said. The

Respondent points to the Employee Personal Details form (105) which had a section that read ***"Medical History we need to be aware of to aid your safe working conditions"*** and puts forward that the Claimant left that blank whereas it would have been appropriate for the Claimant to set down her dyspraxia. They also point to the fact that the Form was taken home to complete with the Claimant's husband.

124. The Claimant states that it was left blank because Ivelina had told her she could leave it blank on 24 September 2020 on the Claimant's first day. On 25 September, the Claimant said that she told her husband that Ivelina had said that and that they had wondered why, but concluded as there was no obligation to disclose the information they would not do so. The Claimant went onto say that she thought it was for emergencies. At para 24 of her statement, she wrote ***"At the time I did not consider my dyspraxia to be such a condition to write on the form"***. It would follow that the Claimant did not consider her condition to be such so as to have any relevance to her work.

125. The Claimant clandestinely recorded many conversations with Ivelina during the course of her employment. Dyspraxia is not mentioned in any conversation until 12 November, after her dismissal. When speaking with her Husband she states that ***"I tell them I have dyspraxia, they argue with me I don't say"*** and in the Claimant's account of the discussion with Ivelina and Illiana it is clear that the Claimant asserts that she told them from the first day but Ivelina and Illiana said that she did not.

126. The burden of demonstrating that the Respondent did not know nor could reasonably have known that the Claimant was disabled lies with the Respondent. We find it striking that despite the Claimant allegedly informing the Respondent right at the start of her disability, she at no point appears to raise the issue of her dyspraxia causing her to be slow when she is regularly pulled up on her performance throughout her employment and instead provides a multitude of organisational, equipment and systemic issues as the reasons for being slow. That has been noted many times in the facts detailed earlier in this Judgment. We accept that the Claimant's husband reported that she had told him she had mentioned her dyspraxia to Ivelina, but he does not know for sure whether she did so or not as he is simply relying upon her say so.

127. We consider it very odd that the Claimant, who now seeks to place her dyspraxia at the very centre of the reason why she was unable to work adequately for the Respondent, did not decide to put it on her form. We could understand that some people do not wish to be labelled or defined by their medical condition but the form is quite clear as to why the information is required and that would have been known to be highly relevant to the

Claimant. But on the Claimant's case she told the Respondent very early on that she had dyspraxia and so it follows that she did not omit it for that reason. We reject her evidence that she was cautioned about filling in that information by Ivelina. On balance we prefer the evidence of the Respondent that dyspraxia was not raised by the Claimant at any time before she was dismissed.

128. That does not finish the issue however as we also have to ask ourselves whether or not the Respondent could reasonably have known that the Claimant had dyspraxia and was disabled. We do not accept that the Respondent could have reasonably known that the Claimant had the disability during her employment. She did not on our findings ever suggest that any aspect of her cleaning was affected by her dyspraxia contemporaneously. As already stated she complained of a lack of support, a lack of equipment, a higher workload, and geographic reasons for the fact she was unable to finish on time. There was never any focus on her medical condition and we do not accept that the Respondent could reasonably have known the Claimant was disabled.

129. Pursuant to section 15(2) of the Equality Act 2010 as the Respondent did not have knowledge of the Claimant's medical condition until after the dismissal and all alleged acts of section 15 discrimination had taken place before there was any actual or constructive knowledge then it follows that the section15 EqA claims are not well-founded and are all dismissed.

Failure to Make Reasonable Adjustments

130. Paragraph 20(1) of Schedule 8 to the Equality Act 2010 provides that a person is not subject to the duty to make reasonable adjustments, if he or she did not know and could not reasonably be expected to know that ***"an interested disabled person has a disability and is likely to be placed at a substantial disadvantage by the PCP…"***.

131. Accordingly following on from the previous findings in relation to knowledge the duty to make reasonable adjustments does not arise in this case and the clams made thereunder are not well-founded and are dismissed.

Indirect Discrimination on Grounds of Race

132. This claim is rejected and dismissed. The PCP is said to be that of "recruiting staff that could communicate in Bulgarian or who were of Bulgarian race". We do not accept that such a PCP was applied by the Respondent. We have seen an email to a number of their cleaners and within that cohort we were told and we accept that there were English, Polish, and Spanish

employees as well as Bulgarians. The Claimant herself was from Hong Kong There is no evidence to support the allegation that any of these employees from outside Bulgaria were able to communicate in Bulgarian. On the basis that no such PCP applied this Claim needs no further analysis. The Indirect race discrimination ground is not well-founded and is dismissed.

Direct Discrimination on grounds of Disability

133. An employer may be able to successfully defend a direct discrimination claim if it can show that it was genuinely unaware of the claimant's protected characteristic. In a direct discrimination claim the Tribunal must conduct an enquiry as to what the reason for the Claimant's treatment was, and this inevitably involves ascertaining the putative discriminator's conscious or subconscious motivations for that treatment. In those circumstances and in this claim it is evidentially difficult for the Claimant to establish the necessary causation as the Respondent has shown to our satisfaction that it had no knowledge that the claimant had the relevant protected characteristic. We are satisfied for the reasons given earlier that not only did the Respondent not know the precise condition suffered by the Claimant but was also not aware of any underlying problems that amount to the condition and its effects. On our findings of fact above, the Claimant relied upon a range of reasons why she was unable to finish in a timely manner which were too many rooms, inadequate or inconvenient equipment etc.

134. The Respondent is entitled to manage any employee including the Claimant. It is for them to decide the standards that are required from the Claimant's work and they are entitled to tell the Claimant what to do and how to do it. There are 12 specific allegations of Disability Discrimination alleged and we will deal with certain similar groupings:

135. **24.1** - We accept the evidence of the Claimant that she did have slightly more cleaning to do than other cleaners but we do not accept that it was anywhere near as big a difference as she suggests and we also conclude that there would have still been sufficient time to do the work in the time allowed by a cleaner working at a reasonable speed at a standard that was acceptable. We accept the Respondent' evidence that Ivelina and Mr Killone were each able to do the two sections downstairs in 2 hours 20 minutes The amount of work the Claimant had to do was a part of why she was sometimes unable to finish on time. We note that on numerous occasions the Claimant was given assistance to finish her section by Max and Petya and so that in itself would even up the amount of work undertaken by each cleaner on a shift. Petya noted in a discussion with Ivelina, which we accept, that the Claimant was getting paid for work she was doing. We consider that the division of labour was made on a rough and ready basis and was influenced by the fact

that Max, who had longest service, did the easiest bit, Petya took on the cleaning of the surgery that the Claimant could not do because she was a patient which left the Claimant with her bit to do. Any excess to the Claimant was not a conscious or indeed unconscious decision to punish her or to treat her less favourably than anyone else or inconvenience her for being a disabled person. The Respondent did not know she was disabled. Whilst there was a small difference in the amount of work the allegation is not well-founded and is dismissed. We accept the Respondent's explanation

136. **24.3, 24.4, 24.5, 24.10, 24.11** – These claims relate to criticisms levelled at the Claimant in relation to the speed of her work or the way she was doing it e.g., using too many chemicals. The Claimant was being managed by her line manager. The reason why the Claimant had it brought to her attention that she was slow and/or not doing work to the required specification and/or was not providing the output of other employees is because that was a judgment that Ivelina could readily come to on the evidence that she had before her. There is ample evidence that the Claimant often did not finish in time. Any other employee working at the same pace as the Claimant or using chemicals in the same way would have been managed in exactly the same way. When Max was doing things in an unacceptable way he was spoken to and ultimately dismissed. None of these managerial interventions had anything to do with the Claimant's disability and a non-disabled comparator would have been spoken to in exactly the same way.

137. **24.7 and 24.8** – These claims relate to being told not to work with Petya and being segregated from Bulgarian colleagues (who were Petya). The evidence was that the Claimant was placed with Petya for a short while in order to learn and also to receive some assistance. It was clear that this was always going to be a short-term situation designed to upskill the Claimant so that she could become self-sufficient in the workplace. The removal of it was not because the Claimant was a disabled person but because from a business perspective it could only go on for a short time. It was reasonable to try and give the Claimant some help and also after the assistance was given to ask that each do their own area. It appears that Petya still helped the Claimant even after this time. The Claimant's disability (which was not known) had nothing to do with these decisions.

138. **24.2** - We consider that adjustments were made to the Claimant's workload in that other staff ended up doing some of the cleaning for her on a regular basis (Max and Petya). To the extent that the Claimant remained doing the same workload, we are quite satisfied that had nothing to do with the Claimant's disability.

139. **24.6** - This appears to be a race discrimination claim as opposed to a disability discrimination claim i.e., answering the phone to the Bulgarian employee but not to the Claimant. We do not accept that this act was discriminatory because of disability for the reasons given at para 32 above i.e., that it was because the Claimant called often and about relatively trivial things that she should have been able to sort out herself.

140. **24.12** - We do not accept that Ivelina ignored the Claimant's concerns raised on 4 November. At para 59 of the Particulars of Claim the Claimant asserts that she had a ***"further discussion about struggling to finish within 3 hours and maintaining the quality of the cleaning on account of the high, unfair workload"*** and also mentioned that she had lost weight and other unspecified health and safety issues. She mentioned her broken glasses and Ivelina said she would speak with Mr Killone and there was discussion about Max. Most of this was an ongoing discussion and there was nothing new apart from the glasses. A further lockdown was about to come into being the following day. Ivelina had been engaging with the Claimant throughout the process. We are satisfied that the Claimant's disability had no bearing on Ivelina's response.

141. **24.13** - The final direct discrimination claim is that Mr Killone failed to investigate any grievances after 13 November. We will deal with this factually later in this Judgment when we consider the victimisation claim. We simply record here that even though Mr Killone knew of the Claimant's dyspraxia at this point, her medical condition had nothing whatsoever to do with his actions re the grievance. We deal in detail with the reasons why he so acted in the victimisation section.

142. For all the reasons cited above we do not consider that the Claimant was subjected to any direct disability discrimination and all of those claims fail.

Direct Race Discrimination

143. The allegations for direct race discrimination are very similar factually to those of direct disability discrimination. We have carefully considered our findings of fact above and we do not accept that any of the conduct alleged against the Respondent was because of the Claimant's race i.e., her Hong Kong nationality. The Claimant had been employed by the Respondent in full knowledge of her nationality and there is a fair amount of evidence of Ivelina actually being very patient with the Claimant despite the many issues that arose. We are satisfied that whatever the nationality of the cleaner all the Respondent really wanted was somebody who would do the tasks assigned to them within the time permitted and who would not upset individuals at the

surgery. We are quite satisfied that race played no part in the Claimant's treatment by any of the Respondent's staff.

144. Having given that general assessment we will deal with each of the allegations in turn.

145. **20.2, 20.6, 20.7, 20.9, 20.11** – All of these matters relate to criticism the Claimant received in respect of her cleaning. The evidence is clear that Max and Petya, who were different nationalities, were also picked up on the quality / speed of the training as and when required. The Respondent wanted cleaners who were doing the work to their specification and were entitled to manage their staff. We do not accept that the Claimant was singled out save to the extent that the quality of her cleaning was often deemed slow and he herself accepted this. We accept that the Claimant's work was compared to Petya but that was because Petya was an effective cleaner doing as was required by the Respondent. Race was not a factor in any of these criticisms / comments of the Claimant's work.

146. **20.1** – For the reasons detailed above at paragraph 135 we do not consider that the additional space the Claimant had to cover was related to race in the same way as it was not related to her disability.

147. 20.3 – We accept that Ivelina did not respond to calls on those days from the Claimant. Our findings are set out at paragraph 32. We consider that Ivelina did not answer the call on those occasions because of the large amount of calls the Claimant did make, often, in our view for relatively trivial matters. We note that Ivelina mostly answered the Claimant's calls but we find that she did not on these occasions because the Claimant's calls were often of little importance. We are quite satisfied that the Claimant's Hong Kong nationality played no part in the decision not to answer.

148. 20.4 and 20.13 – The Claimant was having difficulties doing the work in time. Sensibly the Claimant was paired with Petya, who was deemed to be capable of doing the work in time, because it was hoped that the Claimant would see how Petya went about her work and this would permit the necessary improvement. That was always going to be a temporary arrangement and it came to an end in mid-October. It was not a long-term solution, whatever the nationality of the Claimant. We are satisfied that it was a reasonable thing to try and it was stopped because Petya had her own work to do and the Claimant should have been able to do the work allocated to her in good time. Race was not a factor. The allegation of segregation is an example of hyperbole on the part of the Claimant. There was no segregation – she was simply asked to clean her part of the building. The only other cleaner at the time was Petya and Ivelina filling in for Max.

149. **20.8** - We accept that Petya was told that Max had been dismissed on or around 29 October and the Claimant was told 2-3 days later. That is a difference in treatment, however we can see nothing in the evidence suggests that race was a factor at all in that situation. There is nothing that would suggest that the burden of proof shifts to the Respondent. We do not consider that Ivelina had any concern about the race of individuals. On the balance of probabilities Ivelina communicated as and when the occasion arose to do so and race was not any part of the reason for any delay.

150. **20.10** – We accept that Ivelina and her mother communicated in Bulgarian, their first language but we do not accept that it only started on 30 October 2020. We consider it likely that they did this most of the time and it would be natural to do so. We consider that they would have done so in order to communicate effectively between themselves and would have done so whatever the nationality of the Claimant. The direct race claim is rejected.

151. **20.13** - The final direct discrimination claim is that Mr Killone failed to investigate any grievances after 13 November. We will deal with this factually later in this Judgment when we consider the victimisation claim. We simply record here that we are satisfied that's treatment of the Claimant in respect of the grievances had nothing to do with her race at all.

152. The Claims of direct race discrimination are not well founded and are dismissed.

Race and Disability Harassment

153. In the List of issues, the two different protected characteristics are dealt with in the same List and the alleged acts of harassment are the same for both. Some of the allegations have already been considered as, alternatively being acts of direct discrimination. There are 20 separate allegations. We do not accept that any of the allegations, even if factually true, are related to the Claimant's disability or race for all of the reasons given earlier and so all claims will be dismissed. Having said that we will go through each in turn applying the rest of the harassment test.

154. We consider the twenty allegations firstly to consider whether or not the treatment complained of is proven to our satisfaction to have taken place. Whilst we do not necessarily accept the precise detail in all of the allegations we broadly accept that there was an incident / situation that gave rise to the vast majority of the allegations. .

155. We start first with whether the conduct was unwanted. The Claimant came across as a very delicate individual, racked with self-doubt and easily thrown off track needing time to recompose herself. She did not appear to us to be a robust individual. As a consequence, any form of criticism / comment about the Claimant's abilities or lack of them or any perceived impediment were highly likely to be unwanted.

156. Taking all matter raised as unwanted conduct the next issue was the extent to which any of the conduct had the purpose of violating the Claimant's dignity or creating the statutorily prescribed conduct. We have carefully considered the List and do not accept that the Respondent's purpose in doing any of the things was with such a purpose. The purpose was generally to manage the Claimant and to try and bring the Claimant to an adequate performance.

157. We do accept though that because of the Claimant's own personality that the conduct did have the effect of creating an intimidating and hostile environment for the Claimant. We do not accept, however, that save for one or two exceptions taking into account the circumstances of the case and the Claimant's perception it was reasonable for the conduct to have that effect. As previously stated the Claimant was hypersensitive about most things and a reasonable person would have simply taken matters raised in their stride.

158. Most importantly of course we do not accept that any of the Claimant's actions were in any way related to her nationality or disability. In detail:

159. **53.1** – As previously stated the Claimant did have slightly more work to do which was unwanted and the Claimant perceived it as creating a hostile environment. Objectively we do not accept that it was reasonable to have that effect.

160. **53.2** – We accept that there were minor deficiencies in equipment and the availability of the same which the Claimant perceived as creating a hostile environment. Objectively we do not accept that it was reasonable to have that effect. It was the same for all cleaners and others adopted a far more pragmatic approach.

161. **53.3, 53.12, 53.13** – These matters were related to the Claimant's performance / tasks she had to do and we consider were reasonable management instructions / comments on the Claimant's performance. Again, we accept it was unwanted and the Claimant perceived it as creating a hostile environment. Objectively we do not accept that it was reasonable to have that effect.

162. **53.4** – We consider that these documents were available to the Claimant. If they were not then the Claimant was getting ample guidance on what to do and how to do it by her managers and so they were not necessary. We do not consider that there was any unwanted conduct in this regard

163. **53.5** – On our finding Ivelina said ***"You should do your own part because Max already has one third of the building . It is unfair to Max***", and not the words ascribed to her by the Claimant. Again, whilst that may have been unwanted and may have caused a hostile environment for the Claimant it was a perfectly reasonable comment to make and simply a statement of fact. Objectively we do not accept that it was reasonable to have the prescribed effect.

164. **53.6** – We accept that Ivelina spoke to her mother in their common language and we accept that no translation was given. We have no evidence to confirm that any piece of the discussions was in respect of the Claimant. We do not accept that they were being abusive / unpleasant as seems to be suggested. Again, we accept that the Claimant would have found it unwanted and caused a hostile environment for the Claimant and although the Claimant read too much into it we can understand how she felt this way. We do not accept however that it was related to the Claimant's nationality nor disability.

165. **53.7** – We have explained how this happened in our Reasons above. It was because Ivelina did not wish to get embroiled in yet another discussion of little consequence with the Claimant. Again, whilst that may have been unwanted and may have caused a hostile environment for the Claimant we do not accept that it was reasonable to have that effect. Ivelina spent substantial time with the Claimant answering her calls and so failing to answer happened rarely. It was not related to race or disability.

166. **53.8** – Again as explained earlier working with Petya was a short-term plan. Removing Petya's help was unwanted and may have caused a hostile environment for the Claimant but it was a perfectly reasonable way to manage the Claimant's performance. Objectively we do not accept that it was reasonable to have the prescribed effect.

167. **53.10** – We accept that Max's comment and tone of voice was unwanted and reasonably had the effect of creating the prescribed effect of a hostile environment. On this matter we consider that it was a reasonable reaction from the Claimant and so we accept that Max harassed her. We have already found that his actions were because of the Claimant raising a protected disclosure. In the absence of any evidence from the Claimant that Max had any hostility towards her because of her race or disability the Claim fails. We note that early in the Claimant's employment Max did go out of his

way to assist the Claimant when he had finished his work. There is clear evidence that this outburst was because of the Claimant reporting his inadequacies via a protected disclosure. We are satisfied why he made this outburst and we are satisfied it was not linked to the Claimant's nationality or disability.

168. **53.14** – We do not accept that Ivelina made any comments relating to "time limits" on this date.

169. **53.15** – Ivelina did ask whether the Claimant had received an email on 4 November. It is the email at page 298 of the bundle which had been sent at 1856 informing many staff that a lockdown was starting the following day but work would be going on as usual and a Letter of Authority to work was attached. It was an important email. We accept that Ivelina asked the Claimant if she had seen it and she was perfectly entitled to ask that question. It was a simple request but we accept that at this stage everything from the Respondent was unwanted and created the prescribed effect. Again, we do not consider it to be harassment because it was not reasonable for the conduct to have that effect.

170. **53.16 and 53.17** – We do not accept that Ivelina did not wish to engage with the Claimant re her concerns as there was a discussion between them on that evening. We do not accept that the Claimant was unfairly compared to Bulgarian workers. We accept that she may have been compared against Petya but that had nothing to do with race but the comparative abilities of two individuals at cleaning to the required standard. The Claimant found it unwanted and we accept it created the prescribed effect. Again, we do not consider it to be harassment because it was not reasonable for the conduct to have that effect.

171. **53.18** – We do not accept that Ivelina ignored the Claimant's concerns on this date nor do we accept that the Claimant's work was subjected to any more scrutiny that it had been before.

172. **53.19** – The Claimant was dismissed on 12 November. The Tribunal has provided full particulars as to what it has found to be the reasons for the Claimant's dismissal which will not be repeated. We are satisfied that it had nothing to do with the Claimant's nationality or disability.

173. **53.20** – We accept that the incident on 13 November was an unsavoury one. The initial cause was the Claimant attending work after she had been dismissed. Due to the concerns that surgery staff had about the Claimant her attendance could have had serious ramifications for the contract and we have little doubt that the confrontation that followed was unpleasant

and on balance we accept that Ivelina and/or her mother did physically prevent the Claimant from going further into the building and that the discussions were animated. The conduct would have been unwanted although we find that trying to stop the Claimant was a reasonable thing to do. We accept that it would have created a hostile and intimidating environment and on this occasion we find that it was reasonable for the Claimant to feel that way. We do not consider, however, that it was connected in any way to the Claimant's race or disability.

174. We will deal with Mr Killone's actions under 53.21 and 53.22 in due course when we discuss victimisation.

175. Following on from our findings above, all claims of harassment (race and disability) are dismissed.

Victimisation

176. We have previously indicated that the turning point in this case for Mr Killone was the letter of grievance from the Claimant on 13 November, which was a protected act, as well as a complaint about a range of matters. We have found that Mr Killone, who told us that he had not had anything like this before in his career, panicked and after taking advice decided that he needed to put in place a few procedural safeguards to try and justify the dismissal in a better way. We consider that it was after receiving the grievance that he:

d) Created a letter that invited the Claimant to a probation meeting;
e) Created a letter that provided an outcome to that probation meeting;
f) Sent the letter confirming the dismissal dated 14 November, referencing the Probation Meeting.

177. We deal with each of the Victimisation claims in turn starting with the incident on 13 November at the surgery (**59.1**). We are satisfied that that fracas came about because of the urgent need to prevent the Claimant accessing further the surgery and the potential ramifications on the contract. We are satisfied that the actions of Ivelina and her mother had nothing to do with any previous conversation with them (protected act).

178. **59.3** - We are satisfied that the decision to dismiss the Claimant had been taken before either of the protected acts had taken place. The dismissal victimisation claim is rejected.

179. **59.2** – We are satisfied that Mr Killone invented a more formalised probation process in order to justify his decision to dismiss and he only did so

when he became concerned that the Claimant was raising issues of discrimination in the grievance. He created letters to make it look as if there had been an invitation and an outcome to a meeting specifically held to review the Claimant's probationary period in October 2020. In his letter dated 14 November he also tried to suggest that there was a further probation meeting on 12 November when it is clear that a decision to dismiss had been made previously and Ivelina was simply there to convey the message. The creation of a probationary process that never took place was an act of victimisation.

180. **59.4 and 59.5** – We are satisfied that Mr Killone deliberately provided the Claimant with short notice and an absurdly long trip to Plymouth from South-West London for her grievance hearing. He did so because he wished to bring the process to a close as quickly as possible and hoped that short notice and a long journey (during a lockdown) may well be a way of achieving the same. These claims of victimisation succeeds.

181. **59.6, 59.7, 59.8 and 59.9** – We accept that the Claimant was not given notice of the "rearranged" grievance hearing. The invitation is at page 399. It is not on headed notepaper and there is no indication that the letter was emailed to the Claimant via an accompanying email. We note that there was an email sent on 4 December by Mr Killone (402) attaching the Claimant's P45 and we did not receive a satisfactory answer as to why he would not similarly email the Claimant on the same day the grievance invitation which was said to have been sent by post. We do not accept that this invitation letter was ever sent and the letter has been created for the sake of these proceedings as was the probation documentation. Mr Killone did not want to have any more dealings with the Claimant because she had raised issues of discrimination and he deliberately did not send her the invitation so that the Claimant was unable to attend and the matter could be dismissed in the Claimant's absence and there was no prospect of matters continuing thereafter with an appeal. These claims of victimisation succeed.

182. 59.10, 59.11 and 59.12 – We do not consider that these are made out factually. We have seen emails being sent re payslips and any default re passwords we consider was purely by way of administrative error. The same for reasoning for any underpayment of pay. There was communication after 12 November and so factually that claim is incorrect These claims are rejected.

Indirect Disability Discrimination

183. We do not accept that communication was restricted to oral communication. The Respondent via Ivelina mainly communicated in that way but she also communicated by email and text message. There were also

written instruction son what the Claimant had to do each day within the cleaning cupboard for the Claimant to rely upon. The PCP alleged did not take place and the Claim is rejected.

Wages

184. We are satisfied that the Claimant was not paid the sum of £43.20 in relation to wages in September. We find that all other wages have been paid including holiday pay due and owing.

Breach of Contract

185. There was no implied or express term that the Respondent would pay the Claimant for any PPE bought by the Claimant. Accordingly, no sums are due and owing in relation to that issue.

Final Words

186. The Claimant has been successful in this claim on a small subset of the Claims brought. The matter will be listed for a remedy hearing with a time estimate of one day. The parties should provide dates when they are unable to attend within 7 days of the date of this Judgement being sent out. At first blush, there does not appear to be any loss of earning flowing from the victimisation/ protected disclosure claims and so any award is likely to be limited to an Injury to Feelings Award. The parties are at liberty, of course, to resolve any issues of remedy between themselves.

Employment Judge G Self

18 March 2024