EMPLOYMENT TRIBUNALS

Claimant: Ms Z Zamanpour

Respondent: Property Legal (Manchester) Limited t/a PLS Solicitors

Heard at: Manchester (by CVP) **ON:** 10, 11, 12 and 16 July 2018
10 and 11 November 2020
8 February 2021
9 February 2021
(in Chambers)

Before: Employment Judge Ross
Mr B McCaughey (CVP)
Ms J Williamson (CVP)

REPRESENTATION:

Claimant: In person (Did not attend on 8 February 2021.)
Respondent: Ms A Stroud of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claimant's claims of direct discrimination pursuant to section 13 Equality Act 2010 in:

(1) being dismissed;

(2) not being provided with the correct level of support, training or mentoring;

(3) not being informed of the probationary process;

(4) not being informed of her progress during the probationary period;

(5) not being promoted; and

(6) being allocated more complex files;

are not well-founded and fail.

2. The claimant's claims of racial and/or religious harassment pursuant to section 26 Equality Act 2010 when Ms G Booini of the respondent engaged in unwanted conduct when:

(a) on 24/25 August 2016 she stated that the claimant was "nothing special" and that the claimant was "not a princess";

(b) in September 2016 she stated that "educated people are stupid";

(c) in September 2016 she stated that "we all know you don't know your alphabet"; and

(d) on unspecified dates spoke about her views of Muslim and Iranian men, specifically talking how badly her ex-husband had treated her and how Iranian men do bad things to English women but they always end up marrying a Muslim girl;

are not well-founded and fail.

REASONS

Background

1. This is a case which heard over separate dates. It was adjourned on numerous occasions, predominately due to the claimant's ill health but also for reasons relating to the respondent.

2. The claim relates to alleged acts of discrimination which occurred between March 2016 and the claimant's dismissal in September 2016. It was originally listed for hearing for six days in November 2017, with the consent of the parties, following a case management hearing in February 2017. The hearing was adjourned at the claimant's application on grounds of her health in September 2017 and was relisted for hearing for 6 days in July 2018. On that occasion the hearing proceeded on 10, 11 and 12 July 2018 but the claimant became stressed and unwell on 13 July 2018 and was unable to continue. The claimant was unable to proceed on 16 July due to ill health and the claim was again adjourned.

3. The case was relisted for 28, 29 and 30 January 2019. The claimant made a further application for postponement on health grounds which was granted. The case was relisted for 25, 26 and 27 June 2019, but on that occasion, was postponed because one of the respondent's witnesses, Ms Booini was on a pre-booked holiday in the USA.

4. The case was relisted for 11, 12 and 13 November 2019. The claimant made a further application for a postponement on medical grounds which was granted. When relisting the part heard case, the Tribunal took into account the absence of Counsel for the respondent on maternity leave and the availability of all parties including the Panel over the summer and accordingly the case was relisted for 21,

22 and 23 September 2020. On that occasion the hearing was postponed because the respondent's counsel had symptoms of coronavirus.

5. The case was relisted for 9, 10 and 11 November 2020. On that occasion the hearing proceeded at the Tribunal with the respondent's witnesses, Ms Millican and Mr Hickey. One of the Panel members attended remotely by videolink. The respondent's final witness, Ms Booini, was unwell and was unable to attend. Accordingly, the case was relisted at that time with the consent of the parties for a final day on 8 February 2021 for the parties to hear Ms Booini's evidence and submissions on 8 February 2021 and in chambers on 9 February 2021.

6. The claimant made a further application for postponement of the hearing on 8 February 2021, by email of 5 February 2021 which was considered and rejected with reasons given.

7. The claimant renewed the application by email dated 7 February 2021. The Tribunal considered the application at the outset of the hearing on 8 February 2021.The claimant did not attend.

8. The hearing on 8 February 2021 occurred during the third national lockdown. The guidance from the President of Employment Tribunals at this stage was that all hearings should be heard remotely unless the circumstances were exceptional.

9. The claimant indicated that she was unable to attend a case remotely because she did not have suitable equipment having only an old smartphone and stated she wished the hearing to proceed in person at the Tribunal building.

10. By this stage, in addition to the Presidential guidance that hearings should normally be remote, all 3 panel members had health related reasons for themselves or a household family member as to why a remote hearing was necessary.

11. Taking all factors into account the Tribunal considered it was in the interests of justice for the case to proceed by way of a hybrid hearing. The Tribunal made arrangements for the claimant to be able to attend the hearing in person, as she had wished, with the appropriate video link and screens available in the Tribunal room and a clerk with her socially distanced (wearing a mask) to enable her to participate in the hearing. The panel, the witnesses and the respondent would all attend remotely.

12. In her application to postpone, the claimant stated she felt stressed about attending a hybrid hearing and wished to wait until all parties could attend in person.

13. The Tribunal gave consideration to the claimant's further postponement request but having regard to the interests of justice, refused it and proceeded. (See separate order refusing postponement with reasons.)

Witnesses

14. At the first hearing in July 2018 the Tribunal heard from the claimant and her team leader, Olivia Littlewood. At the resumed hearing in November 2020 the Tribunal heard from Sarah Millican of HR and David Hickey, the appeal officer. At the final resumed hearing on 8 February 2021 the Tribunal heard from Ms G Booini,

a team member with responsibility for supporting the claimant, who was alleged to have harassed the claimant.

15. We did not hear from Jane Caldicott, the dismissing officer who had left the respondent's business by the time her evidence was reached in November 2020.

Issues

16. At the outset of the hearing the Tribunal identified the issues in this case with the agreement of the parties, as follows:

Direct Discrimination – section 13 Equality Act 2010

(1) Was the claimant treated less favourably because of her race by the respondent compared to how the respondent treated or would treat others? In answering the question, the Tribunal will have regard to a real orte hypothetical comparator. The claimant relies on the following acts of less favourable treatment:

(i) Being dismissed – real comparators Majida Bashir, Shaun Steatham, Kate Lees and Kristel Wan;

(ii) Not being provided with the correct level of support, training or mentoring – real comparators Lucy Drinkwater and Shaun Steatham;

(iii) Not being informed of the probationary process – no comparator identified;

(iv) Not being informed of her progression during the probationary period – no comparator identified;

(v) Not being promoted – real comparators Lucy Drinkwater and Richard Garner;

(vi) Being allocated more complex files – real comparator Kelly Millar and Lizzie Welch.

(2) Are the claimant's complaints in time or is the discrimination complained of an omission or is made up of acts or omissions continuing over time?

(3) Is it just and equitable to extend time?

Racial harassment and/or religious harassment – section 26 Equality Act 2010

(4) Did Georgina Booini engage in unwanted conduct with the claimant which related to the protected characteristic of race and/or religion when she allegedly stated to the claimant:

(a) On 24/25 August 2016 that the claimant was "nothing special" and that the claimant was "not a princess";

(b) In September 2016 that "educated people are stupid";

(c) In September 2016 that "we all know you don't know your alphabet";

(d) On unspecified dates spoke about her views on Muslim and Iranian men, specifically talking about how badly her ex-husband had treated her and how Iranian men do bad things to English women but they always end up marrying a Muslim girl.

(5) Did Georgina Booini's conduct have the purpose or effect of either violating the claimant's dignity or did it create a hostile, degrading, humiliating or offensive environment?

(6) Was the conduct related to race and/or religion?

(7) In an effect case only, what was the claimant's perception of Georgina Booini's conduct at the time, taking into account any other relevant circumstances?

(8) Was it reasonable for the alleged conduct to have had that effect upon the claimant?

(9) Are the claimant's complaints in time or is the harassment complained of an omission or is it made up of acts or omissions continuing over time?

(10) If not, is it just and equitable to extend time?

The Facts

We found the following facts:

17. The claimant applied to the respondent via a recruitment agency, Interlink Recruitment. We find the Property Management team of the respondent has a Post Completion Team. We find the position in the Post Completion Team was normally an entry level position, meaning that applicants with limited or no legal experience were often recruited.

18. We find that the claimant had provided a CV which described her experience as a residential conveyancing paralegal (see pages 211-215).

19. We find at interview the claimant said she was familiar with filling in standard forms such as the AP1 Property Registration Application Form, and Stamp Duty Land Tax forms. Her CV stated:

> "Residential conveyancing paralegal dealing with post completion matters, assisting senior partner and team of fee earners with commercial residential property transactions (purchases, freehold, leasehold), processing Stamp Duty Land Tax (SDLT) applications, filling of forms, Land Registry applications applying new/existing owners, replying to requisitions on title, forwarding title documents to the lenders as well as clients, preparing completion statements, file set-up, keep accurate file notes, file closures and archiving, liaising with

solicitors/clients to provide progress updates, ID checks conducting searches".

20. We find the respondent believed they were recruiting a paralegal with the experience listed in the claimant's CV. The claimant started working for the respondent on 21 March 2016 and worked there until she was dismissed for poor performance on 9 September 2016.

21. We find that the claimant was provided with a contract of employment (pages 221-225). The contract confirmed that the claimant was subject to a three month probationary period.

22. We find that the claimant attended an HR induction on 21 March 2016 carried out by Sarah Millican. We find the claimant was given a copy of PLS's Equality and Diversity policy (194-200) and the Discipline and Grievance procedure (201-208).

23. We find the evidence of the induction training at pages 228-230.

24. We find the respondent was diverse in terms of employees of different ethnic origin. We find that the claimant worked in the Post Completion Team where the manager was Olivia Littlewood. We find the team was of 11 people. We find the team had quite a high turnover of employees. We find that the department was essentially an administrative department. We find that Olivia Littlewood interviewed the claimant with Ms Millican of HR. We find that given the claimant informed them she was familiar with Land Registry portal and relevant forms and the processing of relevant documentation, they anticipated she would need less training than other recruits who were often entry level with no experience of conveyancing whatsoever.

25. We find the work of Post Completion was that paper files were passed from the Conveyancing Team to the Post Completion Team following the completion of a sale. We find that after being allocated a new file an assistant was expected to check the file to ensure that the relevant paperwork was contained within it. If the paperwork was in order the assistant then proceeded to register the property. To do this the assistant completed the AP1 form (a standard Land Registry form) in the respondent's case management system. We find that once the AP1 was sent off the file was filed away. If everything had been properly completed the team received back confirmation of this from the Land Registry and the property was registered in the name of the new owner. If there were any issues with the application the Land Registry replied to the team with a "requisition". These requisitions were generally received from the Land Registry to a communal team email inbox. We find the team was generally given a four week timescale to reply to the issue. We find that all legal assistants receive all emails which were sent to the communal email address (the email addressed used by the Land Registry). We find that legal assistants were expected to "drag" emails which came in on their allocated files to the relevant file in the case management system.

26. We find a "plots" file was when a developer had purchased land and sold it in separate parcels so registration was required with a fresh title for each plot. A plot might be leasehold or freehold

27. We find that when the claimant started she was provided with training (half a day) on the respondent's case management system "Proclaim". We find that within

two weeks of starting with the respondent Olivia Littlewood became aware that the claimant was not doing as well as hoped.

28. We find that as a guide each legal assistant was expected to deal with a minimum of ten new files a day (see page 232).

29. We find on 22 April 2016 Olivia Littlewood was concerned because she had found some lender chaser letters which had not been dealt with by the claimant. She reminded the claimant that these were extremely important letters and should take priority over other work. She explained the reason for that was that if the firm did not reply to lenders within a reasonable timescale the lenders "can and will take us off their panel causing us to lose work".

30. We find on 5 May 2016 it was brought to Ms Littlewood's attention by Georgina Booini, another team member, that the claimant was not dealing with certain files appropriately (page 235). We find that if a property had never been registered with the Land Registry, the form which needed to be completed was an FR1, not an AP1. We find this was a slightly longer form which had to be returned by post and generally took more time than an AP1. We find that Georgina Booini reported the claimant was picking up these files, doing a draft AP1 and then returning it to the box for someone else to pick up rather than completing the file herself. We find Ms Littlewood spoke to the claimant about this.

31. We find on 6 May Ms Littlewood reminded the claimant not to email or speak to other teams with queries without first consulting her. It had been brought to Ms Littlewood's attention that the claimant was regularly phoning members of the Conveyancing Team and sometimes directors of the respondent's business for clarification of information which was already in the file. We find that this was not appropriate and was an inconvenience for the people she was contacting, and frustrating for them because the information was often in the file. We find that Ms Littlewood reminded the claimant to speak to her to ask her "anything you are unsure of on files".

32. We find on 9 May 2016 Ms Littlewood reminded the claimant to keep her task list up-to-date (page 237).

33. We find there were further problems on 10 May. We find the claimant had cancelled a task from her task list when the tasks had not yet been resolved (page 238). On 10 May Ms Littlewood was made aware that a file had been passed back to the Conveyancing Team by the claimant without a proper explanation.

34. We find by May 2016 Ms Littlewood was becoming concerned about the number of issues with the claimant's work and believed she was not as experienced or as capable in residential conveyancing matters as had been suggested by her CV and at her interview.

35. We find Olivia Littlewood raised concerns about the claimant's performance with solicitor and director Claire Egerton, stating that she was unhappy with issues around the claimant's work, including that the claimant was not coming to Olivia Littlewood as her manager but instead was going to other members of the team, including a colleague Shaun Steatham. She was also passing files back to others to carry out tasks that were her responsibility. At page 245A Claire Egerton

communicated to senior colleagues Daniel Hickey, Sarah Millican and Jane Caldicott:

> "There are a few rumblings from the teams about Zohreh. She seems to be bypassing Olivia and either going to the team or Shaun, meaning Shaun isn't getting anything done! She's also passing files back to do things that are her job to do. Olivia has spoken to her but it appears to have fallen on deaf ears."

36. Mr Hickey responded, saying, "I can't see it working out". He said:

> "In the meantime, Jane, can you try to find a sensitive way of broaching with her and/or Olivia at some point."

37. Ms Caldicott was the Operations Manager at that time. Mr Hickey was one of the directors of the business and Claire Egerton was another director. Jane Caldicott stated on 18 May:

> "It was obvious this was never going to work. She has no experience at all and is just not the right fit."

She also stated:

> "Zohreh has been told again this morning about not disturbing fee earners and going to Olivia for guidance. I fear the problem is much deeper as she's just not getting the basics and is asking the same questions over and over."

38. We find on 18 May Ms Littlewood reminded the claimant, "Any questions you have on any files please come to me" (page 246).

39. We found at this point Ms Littlewood made the decision to ask Ms Booini, an experienced legal assistant, to provide coaching and additional support to the claimant. However, we find the claimant continued to struggle.

40. On 15 June the claimant had drafted the AP1 in the wrong case (page 264).

41. We find that when the claimant first started with the respondent they expected her to be able to work independently once she had been trained on their case management system, Proclaim. However we find, based on the evidence of Ms Littlewood, the respondent became aware that was not the case and she was provided with further support. We accept the evidence of Ms Booini and Ms Littlewood that the claimant was not allocated the more complex files because it was apparent she was struggling with the workload. We find Ms Booini allocated her purple files in particular which were the easier files. We find the exception to this was that the files for Redrow properties which were bound in such a manner that they were physically very difficult to open and scan onto the system. We rely on Ms Booini's evidence that the claimant had a good knack of opening them, and she may have asked the claimant to do more of those files because she could open them. However we rely on her evidence that the content of those files was basically the same as other files: they were not more difficult to deal with.

42. We find that the claimant wrote to the respondent asking whether she had passed her probation period on 22 June 2016 (page 277). We find Ms Millican replied the following day, saying:

> "Jane deals with team probation meetings and she will be arranging a one-to-one with you at some point next week to give you feedback on how you're doing, etc."

43. We find that the claimant had not passed her probation. We find she was never informed that she had passed her probation. We find Ms Caldicott did not hold a one-to-one with the claimant. We rely on Ms Millican's evidence that normally the team leader (if probation had been passed) would inform her as HR manager and she would then send out a letter confirming this (examples at pages 333, 334 and 366). We find Ms Booini and Ms Littlewood continued to make the claimant aware of issues in relation to her work. We find the claimant's performance did not improve.

44. On 20 June Ms Littlewood reminded the claimant to bring her task list up-to-date.

45. On 22 June Ms Littlewood informed the claimant that the client's address for service had been entered incorrectly. She explained how to correct the problem (page 268).

46. On 25 June Ms Booini emailed the claimant to remind her that if there were two borrowers two signatures were required.

47. On 1 July 2016 Ms Littlewood reminded the claimant that there were two things wrong with a file: the client's correspondence address and how the clients were holding the property. She stated:

> "Luckily I have spotted this before the TID has gone to the client but please be more careful in future."

48. She had also made an application to the Land Registry for the amendments (page 291).

49. At page 292 Ms Littlewood reminded the claimant that she should not put files in the TID pile if they still had an existing charge. We find TID stands for "Title Information Document.

50. We find on 5 July Ms Littlewood noted that the claimant had missed the EMD off her application to the Land Registry. Also on 4 July Ms Littlewood discovered that the claimant had contacted a client inappropriately. The client said:

> "I just received a telephone call from Z asking me how the property should be registered with the Land Registry."

51. Ms Littlewood reminded the claimant to doublecheck with her or Georgina Booini if she was not in before calling the clients to ask for help. She noted that in that case they had the information on the file and another member of staff had to take a call from a "very unhappy client because you chased him for info we already had".

52. On 5 July Ms Littlewood reminded the claimant to check with her before emailing the whole team about a matter (page 297).

53. On 6 July Ms Littlewood informed the claimant that her task list needed to be up-to-date and her Title Information Documents ("TIDs") should be pulled out and checked. She said these were two tasks that should be done on a "daily basis". She noted the claimant had 156 tasks on her task list which dated back to 18 June. She stated, "this is unacceptable". She concluded by saying, "any questions let me know".

54. In cross examination the claimant said that Ms Littlewood had looked at the wrong section of the portal and that she considered she was within the 30 days.

55. Further problems are illustrated by the emails of 16 July (pages 312 and 313).

56. In cross examination the claimant disputed that there were any problems with her work.

57. We find that in June 2016 the Post Completion Team had moved into a new building.

58. We find matters came to a head when Ms Littlewood was on leave at the end of August 2016.

59. On 24 August 2016 Shaun Steatham, another member of the team, had come to Georgina Booini with concerns that over a month's worth of requisitions had not been dragged properly across (that is saved to the proper files) nor had tasks been set properly. Some items were being deleted or pushed back.

60. We find that in an email to Ms Millican in September 2016 Shaun Steatham clarified what had happened.(page 384):

> "The outstanding issues with Z came to light when I received a lender chaser as we deal with them within 24 hours of coming in. The lender chaser I got had been submitted to the Land Registry, as we save a copy of the day list to case and send it back to the lender as proof. However, Land Registry now show if there is a requisition, warning of cancellation and if the matter has been completed or cancelled with date if it was within the last 30 days. I noticed on the one I had that a requisition and warning had been issued but noticed there was nothing on the file.
>
> I then spent six hours on two days going through my deleted items checking all emails from Land Registry making sure that all requisitions had been dragged into case and tasks were in place.
>
> I noticed there was over a month's worth of requisitions which hadn't been dragged in, or if they had they had been dragged in as a letter from Land Reg rather than requisition so no tasks were being set."

61. We find Ms Booini escalated the concern to Jane Caldicott, the Operations Manager, who was responsible for managing teams of fee earners and support staff. She asked Ms Booini to sit down with the claimant to discuss how she was dealing with requisitions. P347

62. Ms Booini responded to Ms Caldicott on 25 August confirming she had spoken to the claimant:

> "Yes I spoke with her. She is sitting at Olivia's desk this week and said she hadn't received the requisitions. Then she found them in her 'clutter' folder. She has over 2,000 unread emails in clutter so she hadn't seen them. She spent an hour on the phone with Titan to resolve the clutter matter.
>
> She did not accept responsibility for the problem, blaming everyone else."p347

63. Ms Booini went on to say the problem is probably "bigger than I thought".

64. The following day Ms Booini updated Ms Caldicott on the scale of the problem.p349.

65. We find the emails had gone into the claimant's clutter folder which should never have happened. We find the reason it had happened was because the claimant had changed the email address for the Land Registry to reply to her applications from the group inbox to her own personal email address.

66. The claimant disputed this. She also disputed that she knew that she should not change the email from the group email to her personal email. At the Tribunal she said that Shaun Steatham gave her the "wrong advice". She did not agree that it was very important that requisitions sent from the Land Registry should go to the group email address. She said she was told by Shaun Steatham she could use either the group email address or her own email address. Later in cross examination she said she now accepted that the Land registry requisitions should go to the group email address. The claimant did not say at her dismissal meeting that Shaun Steatham had told her to use her personal email address.

67. We find that because the claimant had transferred the emails to her personal email address and not dealt with them, after a period of time they were automatically transferred to a "clutter" folder. The claimant did not check her clutter folder. She said she did not know to do so. We find this was a very serious problem for the respondent. We find the reason why the respondent required emails from the Land Registry to go in the group email inbox was so that items were not missed.

68. We find that if there was a problem with registration of property the Land Registry would send a requisition requirement and give a four week window to resolve the problem. We find that if a requisition returned to the respondent was not dealt with, the registration of the property would be cancelled by the Land Registry, meaning the property was not fully registered in a new owner's name, meaning that the previous owner could potentially still borrow against the property. The claimant accepted that would leave the lender exposed.

69. We rely on Ms Booini's evidence as supported by the contemporaneous emails at page 349 that she spent a lot of time on 25 and 26 August checking the claimant's requisitions and searching through her clutter folder. She also found that the claimant had deleted 600 cases from her clutter folder but there were 1,400 items there. She stated, "it's a huge job checking them" and stated, "it will take a couple of people to get all this straight". She noted there were 12 pages of requisitions she needed to go through. Later the same day she indicated there was one matter where the business had been exposed (see page 351).

70. We find the file on which the respondent had been exposed 120241.001MS/ZZ where the registration of the property had been cancelled because the correct form was not properly completed. We find Sarah Millican of HR was informed. P351.

71. We find Ms Booini continued to deal with the issues. On 31 August she confirmed:

> "I have been through her clutter items of 2698 unread and deleted all the ones that do not apply to her. There are 73 Land Registry items still in there, the oldest being 10 May. She did feel that things were only going to clutter since she sat at your desk last week but this is clearly not the case. She is now fully aware they are all her responsibility. I also retrieved 39 items from deleted which I've just asked her to check. I will continue to monitor."p357.

72. The files Ms Booini found in "deleted" are evidenced at page 356.

73. Also on 31 August Ms Booini asked the claimant not to deal with any new files (see page 357).

74. We find that during the week of 30 August 2016 Ms Caldicott and Mr Hickey were on leave. We find that Ms Millican had spoken to one of the senior managers and made the decision that the claimant's employment should be terminated due to the performance issues.

75. On 30 August Ms Millican asked the senior management team when the dismissal would take place (see page 353A) and it was agreed the dismissal would occur when Mr Hickey and Ms Caldicott returned.

76. The claimant worked that week and Ms Booini continued to monitor her performance. She continued to raise issues. On 7 September 2016 she stated:

> "When Z is sending an email from Proclaim (the case management system) to a client or SSL she is changing the 'from' to her own name. What happens then is the email is not shown as being from PCS so all replies are sent directly to her (rather than the Post Completion inbox). I am unsure why she would do this. If she were to be off the emails would be left until her return."p367

77. We find that on 7 September Ms Millican and Ms Caldicott decided they would conduct the meeting with the claimant as soon as possible due to the nature of her poor performance and the ongoing risk this was posing to the business and their clients. A dismissal letter was prepared and brought to a meeting with the claimant on 9 September 2016.

78. We find the claimant did not have advance notice of the meeting and was not provided with information setting out details of her poor performance. We find the meeting started in the late afternoon. There is a dispute about the precise length of the meeting. We refer to the minutes of the meeting at pages 367B-367C. We find the reasons given to the claimant for dismissing her were that she had not been dealing with matters in good time, emails from the Land Registry had not been actioned within the correct timescales, emails had been going to her clutter box

because she had changed the email address in Proclaim (the case management system) to her own instead of keeping it as the team inbox email address.

79. The respondent informed the claimant when the clutter folder problem was brought to her attention she had deleted 600 items from her clutter folder and then deleted her deleted items. The claimant did not respond as to why she had changed the email address to her own from the team inbox email address or why she had not been checking her clutter folder. She said the problem with clutter was not her fault and was because of IT and she did not know the emails were going into that folder.

80. The claimant was dismissed by Ms Caldicott in the presence of Ms Millican. Despite the fact that the claimant's contract of employment only entitled her to one week's notice, the respondent gave her a month's pay in lieu of notice although she was dismissed with immediate effect.

81. We find the claimant appealed her dismissal by email of 10 September 2016 (page 372). We find this was the first occasion where she stated she was being treated differently to other team members because of her nationality. We find the appeal meeting took place on 20 September 2016 conducted by Mr Hickey. The minutes are at pages 386-398 taken by Sarah Millican (handwritten). We find at her appeal the claimant complained that Ms Booini treated her badly and verbally abused her.

82. The claimant's appeal was not upheld.

83. We find that Ms Millican interviewed Ms Booini on 22 September 2016 to investigate the allegations made against her by the claimant.(pages 421-422).

84. The appeal outcome letter is at page 399 (to be found on the reverse of document 367(d)).

The Law

85. For the direct discrimination claim the relevant law is s.13 Equality Act 2010. The burden of proof provision at s136 Equality Act 2010 is relevant. The Tribunal reminded itself the established authorities demonstrate there is a two stage process in a direct discrimination case. We must consider whether the claimant can adduce facts which could suggest the reason for the treatment is discriminatory. If so the burden shifts to the respondent to show there is a non discriminatory reason for the treatment. These authorities include Igen Ltd v Wong 2005 3 ICR 931, Madarassy v Nomura International plc 2007 IRLR 246 and Efobi v Royal Mail Group Ltd 2019 2 All ER 917.

86. The Tribunal reminded itself that a difference in treatment and a difference in protected characteristic are not sufficient to shift the burden of proof. There must be "something more". See Mummery LJ in Madarrassy v Nomura International plc.

87. We also reminded ourselves that it is necessary to explore the alleged discriminator's mental processes. We took into account Lord Nicholl's guidance in that bias may be unconscious. See Nagarajan v London Regional Transport 1999 ICR 877.

88. For the harassment claim the relevant law is s26 Equality Act 2010. We reminded ourselves of the principle in Richmond Pharmacology v Dhaliwal 2009 ICR 724 EAT which gives guidance as how the "effect" test in s26(4) should be applied.

Applying the Law to the Facts

Direct Discrimination – section 13 Equality Act 2010

(1) Was the claimant treated less favourably because of her race by the respondent, compared to how the respondent treated or would treat others? In answering the question, the Tribunal will have regard to a real or hypothetical comparator.

89. The claimant relied on six acts of less favourable treatment:

(i) Being dismissed – real comparators Majida Bashir, Shaun Steatham, Kate Lees and Kristel Wan.

90. The claimant identifies herself for the purposes of the Equality Act 2010 as Persian. We find being dismissed is capable of being an act of less favourable treatment.

91. The Tribunal reminds itself of the burden of proof. The Tribunal reminds itself that a difference in treatment and a difference in protected characteristic is not necessarily sufficient to shift the burden of proof. There must be "something more". The Tribunal reminds itself that there is often no direct evidence of discrimination. The Tribunal reminds itself there may be matters from which an adverse inference could be drawn.

92. So far as the claimant's dismissal is concerned the Tribunal has taken into account that the respondent did not follow a disciplinary process when dismissing the claimant. The claimant was not presented with a letter of invitation to a disciplinary hearing together with the information showing her poor performance. Instead she was invited to a meeting on a Friday afternoon where the letter of dismissal had already been prepared and was informed that her employment was over. The decision to dismiss her had clearly been taken in advance of the meeting given the email communications between the senior managers.

93. On the other hand, the respondent had serious concerns about the claimant as early as May (see page 245B) but at that time did not dismiss her. Instead the respondent arranged for the claimant to be more closely supervised by Georgina Booini. Also, the claimant had less than 2 years service with the respondent, meaning that she had no right to claim " ordinary" unfair dismissal- a fact which means some employers dispense with a full disciplinary process when an employee has not accrued that right.

94. The Tribunal has relied on the information in relation to the lack of a disciplinary process and the fact that the claimant was simply informed of her dismissal as facts from which it could draw an adverse inference, shifting the burden of proof to the respondent.

95. The Tribunal turns to the respondent's explanation for the dismissal. We are wholly satisfied by the respondent's explanation for the treatment, namely that the reason the claimant was dismissed was because of her poor performance. We find Ms Littlewood and Ms Millican to be a clear and reliable witnesses. We rely on Ms Littlewood's account of the claimant's poor performance and Ms Millican's explanation of what occurred at the dismissal meeting. We are satisfied the respondent has shown there were serious issues with the claimant's work particularly regarding her failure to deal with emails from the Land Registry properly and within the correct timescales. We find that the claimant never gave a clear explanation as to why she had changed the email address from the group email to her personal email. The Tribunal is not convinced by the claimant's explanation at the Tribunal hearing that Shaun Steatham had suggested she should do this. Although the claimant says she was taken by surprise by the disciplinary meeting where her employment was terminated, we find once the issue of changing the email address was raised there, if the reason she had done that was because another employee had told her to it, she would have informed the respondent. She agreed in cross examination she did not.

96. The Tribunal finds that panel 7 on the AP1 registration form defaulted to the team email address. We rely on the evidence of Ms Littlewood for this. We do not accept the claimant's evidence that the space for the email address was blank and had to be filled in for each form. We find in order to enter a different email address the group email had to be deleted and a fresh email address manually entered. The Tribunal had regard to the AP1 forms in the bundle to which it was taken which showed the claimant had entered her own email address e.g. page 323. The Tribunal relies on Ms Littlewood's evidence that the claimant was made aware she should use the Post Completion email address and was not told she could change it to her personal email address.

97. So far as the clutter box is concerned, the claimant agreed in cross examination that she was aware of the clutter folder from May 2016. It was the claimant's evidence that Ms Littlewood told her to call the IT company, Titan, to resolve this. Ms Littlewood disputes that. She agreed she told the claimant there were a lot of emails in her clutter but not that she should call Titan. The Tribunal prefers the recollection of Ms Littlewood. The Tribunal finds that clutter is a function of Microsoft Office whereby items which have not been actioned are moved to the clutter inbox.

98. The Tribunal finds it surprising the claimant said she was unfamiliar with this function given that at her interview she indicated she was familiar with Microsoft Office. The Tribunal finds that on her own admission in cross examination the claimant was aware of the clutter inbox from May 2016. The claimant also agreed in cross examination that by the end of August 2016 there were 2,698 unread emails in her clutter folder.

99. The Tribunal finds that the respondent had very clear evidence of the claimant's poor performance. We rely on the evidence of Ms Booini, Ms Littlewood and Ms Millican that the failure of the claimant to deal with her work in an organised and timely fashion was very serious because where a property was not fully registered in the new owner's name within the appropriate timescale, a third party could potentially borrow against the property leaving the lender exposed.

100. The Tribunal turns to consider the claimant's comparators. The Tribunal reminds itself that a comparator should be an individual in the same set of circumstances as the claimant but with a different protected characteristic, in this case of a different nationality. The first comparator, Majida Bashir, is not an appropriate comparator because she was not an assistant in the Post Completions department. She was a qualified solicitor. For that reason she is not an appropriate comparator. In any event we rely on the evidence of Ms Millican that there were no performance concerns in relation to her. Kate Lees was a conveyancing executive, not an assistant in the Post Completions department. For that reason she is not an appropriate comparator. In addition, we rely on Ms Millican's evidence to find there were no performance issues in relation to her so for both these reasons she is not a suitable comparator.

101. Shaun Steatham was an assistant in the Post Completions department like the claimant but we find he was considerably more experienced than her. In fact the claimant had to be reminded not to trouble him with queries. The respondent had no performance issues with him so he is not a suitable comparator.

102. Finally, Kristel Wan was a conveyancing assistant. She was not in the post completions team. There were disciplinary issues with her but in relation to her attendance not her performance. We find that Ms Wan, who was described as "white English" had a disciplinary meeting on 13 May 2016 at which she received a first written warning. The claimant agreed she did not know about Ms Wan's performance, attendance or personal details. The Tribunal finds that the respondent took into account that Ms Wan's father had recently died when issuing her with a disciplinary warning in relation to her attendance. As Ms Wan was in a different department and the circumstances were different, she is not a suitable comparator.

103. In conclusion, the Tribunal has found that the burden of proof shifted to the respondent but the Tribunal has found that the respondent had a clear non discriminatory explanation for the claimant's dismissal, namely her poor performance. The Tribunal finds that dismissal was wholly unrelated to the claimant's nationality. The Tribunal finds a hypothetical white comparator with the same poor performance as the claimant would also have been dismissed because of the risk to the business.

104. In reaching this conclusion the Tribunal has also taken into account that the respondent could have dismissed the claimant in May 2016 when issues with her performance were already becoming clear. However, it chose not to do so and instead at that stage sought to support her by asking Ms Booini to assist her.

(ii) Not being provided with the correct level of support, training or mentoring – real comparators Lucy Drinkwater and Shaun Steatham.

105. The Tribunal finds that the claimant received training from the respondent. The Tribunal relies on the induction programme at page 228-230 and the evidence of Ms Millican that the claimant attended an HR induction conducted by her on 21 March 2016 where she went through the company's policies and procedures, including the company's commitment to equality and diversity and the disciplinary and grievance procedure. We find the claimant was given a copy of the Equality

and Diversity policy (pages 194-200) and the Disciplinary and Grievance procedure (pages 201-208).

106. We find that the claimant was told: "The majority of your training will be conducted with the team by Olivia", and that Ms Littlewood provided the claimant with a half day training on the respondent's case management system, Proclaim.

107. We find that given the content of the claimant's CV at page 211 the respondent thought that they had recruited a person who had experience in residential conveyancing as a paralegal. Her CV states:

- "Dealing with post completion matters;
- Assisting senior partner and team of fee earners with commercial residential property transactions (purchases, freeholds, leaseholds);
- Processing Stamp Duty Land Tax (SDLT) applications, filling of forms;
- Land Registry applications, applying for registration of new, existing owners;
- Reapplying for requisitions on title;
- Forwarding title documents to the lenders as well as clients;
- Preparing completion statements;
- File set-up, keep accurate file notes, file closures and archiving;
- Liaising with solicitors, clients to provide progress updates;
- ID checks conducting searches.

108. The Tribunal finds that Ms Littlewood interviewed the claimant with Ms Millican and that the claimant informed them at the interview she was familiar with the standard forms, such as the AP1 property registration application form, and SDLT forms.

109. We find that on the basis of the information in her CV and provided at interview the respondent anticipated that once the claimant had been trained in the respondent's case management system she would be familiar with the nature of the work and be able to do it.

110. We rely on Ms Littlewood's evidence that within a few weeks it became clear that the claimant was not as experienced as she had suggested in her CV and at her interview. The claimant did not appear to know the difference between registered and unregistered land. If a property had never been registered with the Land Registry before, the form which had be completed is the FR1 form not an AP1 form (which is for registered land). The FR1 form is a slightly longer form which has to be sent by post and takes more time than an AP1. On 5 May it was brought to Ms Littlewood's attention by Georgine Booini that the claimant was picking up these files, doing a draft AP1 and then returning it to the box for someone else to pick up

rather than completing the file herself. The respondent had anticipated the claimant would have been able to deal with FR1 forms by that time. We find Ms Littlewood spoke to the claimant about that matter.

111. We rely on Miss Littlewood's evidence that although initially she had allocated some more complex files to the claimant, believing her to be experienced at the work, once she became aware of problems with the claimant's work she allocated her the easier files, in particular the purple files. She also allocated the claimant Claire Egerton's files. The reason for doing this was that Claire Egerton was known to be a fee earner whose files were in good order and there were very rarely issues with those files.

112. We find that once the respondent realised there was an issue with the claimant Ms Littlewood flagged her concerns with more senior management and arranged for Ms Booini to provide her with further support and assistance.

113. Accordingly, the Tribunal finds it is factually incorrect for the claimant to state she was not being provided with the correct level of support, training or mentoring. We find that the claimant received training, initially on the case management system and then on the job training.

114. The claimant relies on comparators Lucy Drinkwater and Shaun Steatham. We find they are not suitable comparators. We rely on the respondent's evidence that the role of an assistant in the Post Completions Team was essentially an administrative role. We find that employees recruited into the team often used it as a "stepping stone" to progress to other teams. We find that Lucy Drinkwater was an apprentice. We find she was a school leaver who was three months into a two year apprentice scheme which required her to spend time in the post room, reception and in the Post Completions Team. We find she had no experience whatsoever of working on legal files compared to the claimant who had six months' experience as a paralegal in a previous firm. Accordingly we find Lucy Drinkwater is not a suitable comparator.

115. We find Shaun Steatham is not a suitable comparator. He had been a legal assistant in the Post Completions department for approximately 12 months when the claimant joined and needed very little supervision.

116. We find the nature of the support and mentoring provided by Georgina Booini and Olivia Littlewood was supportive. We rely on the tone of the email correspondence to her. For example there are emails on pages 293, 296, 299 and 301 which have either smiley faces or "x's" on them. We rely on page 330 where the instruction given by Ms Booini is clear and the final comment is helpful, "please give me a shout" if she needs further assistance. We rely on the evidence of all parties that both in the original building and the new building from June 2016 the claimant sat close to Ms Booini and Ms Littlewood and so was able to ask verbally for assistance.

117. Accordingly, having found that the claimant's statement that she was not provided with the correct level of support, training or mentoring is factually incorrect, we find there was no "less favourable treatment" and the claim fails at this stage. If we are wrong about that we find the claimant has not adduced facts which could suggest the reason for any difference in treatment is nationality and accordingly the

burden of proof does not shift to the respondent. However, if we are wrong about that and the burden of proof has shifted we are satisfied that the respondent provided the correct level of support, training and mentoring through its initial training on the case management system and then by the "on the job" training provided by Ms Littlewood and Ms Booini and there was no discriminatory treatment.

(iii) Not being informed of the probationary process – no comparator identified.

118. The claimant commenced employment with the respondent on 21 March 2016. There was a clause in her contract saying she was subject to a probationary period of three months i.e. to 21 June 2016. We find the claimant wrote to the respondent seeking clarification of whether she had passed her probationary period on 22 June 2016 (page 277). She received a reply. She was informed, "Jane deals with team probation meetings and she will be arranging a one-to-one with you at some point next week". Jane Caldicott has left the respondent's employment and did not attend the Tribunal to give evidence, although we did have a statement from her. Ms Millican informed us that ordinarily probation reviews are completed by the team leader, who was Olivia Littlewood. However, we rely on Ms Littlewood's evidence that she found the claimant's performance was not satisfactory and had escalated her concern to senior managers.

119. We rely on the evidence of Ms Millican that the claimant was never informed that she had passed her probationary period. We rely on the evidence of Ms Millican that if she had passed, Ms Millican would have sent a positive letter confirming that the probationary period had been passed (see pages 333, 334 and 366 for examples of such letters to other employees). We find because of the concerns flagged by Ms Littlewood to the senior management team in May 2016 the claimant had not passed her probationary period and was not informed she had passed her probationary period.

120. We find that Ms Caldicott did not meet with the claimant as she suggested she would.

121. We find the claimant was aware there were concerns around her performance- there were numerous occasions where Ms Littlewood or Ms Booini flagged up problems with her work to the claimant, as set out in our findings of fact.

122. The Tribunal finds that not being informed of the probationary process, in the sense that the claimant was not informed of the outcome of whether or not she had passed the probationary period, is capable of amounting to less favourable treatment. No comparator is relied upon. No evidence was adduced to suggest that the reason the claimant was not informed she had not passed her probationary period was her nationality. The Tribunal heard evidence that the respondent's team was diverse, as is reflected by the letters to the individuals in various teams who did pass their probationary period. The Tribunal finds it likely that the reason why the claimant was not specifically informed she had not passed was because of a confusion at the senior management level of who was dealing with the matter. Ms Littlewood had flagged her concerns to senior managers who were discussing it in May 2016 (see the emails between Claire Egerton, Jane Caldicott and Mr Hickey).

Jane Caldicott said she would deal with the matter but she did not speak to the claimant.

123. The Tribunal is not satisfied there is any evidence to shift the burden of proof.

124. However, if we are wrong about that and the burden has shifted the Tribunal is satisfied that a hypothetical white comparator in the same set of circumstances as the claimant would have been dealt with in the same way.

(iv) Not being informed of her progression during the probationary period – no comparator identified.

125. The Tribunal finds that is factually incorrect to state the claimant was not informed of her progress. The Tribunal finds that during the course of her employment the claimant was regularly informed of her progress in the sense that she was being managed by Ms Littlewood and then mentored/supervised by Ms Booini and there are numerous documents in the bundle where the claimant is given feedback on her progress.

126. The Tribunal reminds itself that the clause in the claimant's contract says. "The organisation will assess and review your work performance during this time and reserves the right to terminate your employment at any time during the probationary period".

127. The Tribunal finds that the respondent was assessing and reviewing the claimant's work performance. The Tribunal relies on the evidence of Ms Littlewood and Ms Booini in their statements of evidence and the information disclosed by Ms Littlewood to Claire Egerton and/or Jane Caldicott that she had concerns about the claimant, in particular a concern that the claimant was not coming direct to her but instead was contacting senior members of the business or other members of the team with queries. The claimant was given feedback on this (see page 246).

128. The problem with the clutter folder was raised with the claimant in May 2016 by Miss Littlewood.

129. We find Ms Littlewood was concerned that the claimant was failing to take comments and instructions on board and that was why she took the decision to ask Ms Booini to work more closely with the claimant.

130. Accordingly, the Tribunal finds that the claimant was informed of her progress during the probationary period.

131. If the Tribunal is wrong about that, the Tribunal finds there is no evidence to shift the burden of proof. The Tribunal reminds itself that less favourable treatment and a particular protected characteristic is not sufficient to shift the burden of proof, there must be "something more". Accordingly the claim fails.

(v) Not being promoted – real comparators Lucy Drinkwater and Richard Garner.

132. The Tribunal finds that the claimant did not apply for any other position whilst she was in employment with the respondent. When asked specifically whether she did so the claimant said she applied for promotion "indirectly". She says she expressed an interest in a role in the Accounts Department and that she expressed an interest in a paralegal position to Mercedes Fraser.

133. The Tribunal finds it was a matter for the claimant to complete her probation successfully before the question of promotion was relevant, but notwithstanding this it was open for the claimant to apply for other positions but she did not do so.

134. The claimant relies on a real comparator of Lucy Drinkwater. We rely on out previous findings that the claimant has misunderstood the position in relation to Lucy Drinkwater. We find Lucy Drinkwater was a school leaver who was an apprentice who was working in different departments for fixed periods of time as part of her apprenticeship. Accordingly she was not being promoted, she was being moved around departments to gain experience.

135. So far as the other comparator Richard Garner is concerned, the Tribunal relies on its findings of fact that Mr Garner had complete his Legal Practice Course ("LPC") and must therefore have a law or other type of degree. We find that he had already completed 12 months' experience as a legal assistant and subsequently applied and was successful in being offered a training contract as a solicitor with the respondent.

136. Although the claimant's CV indicates she has a science degree, she does not have the legal practice qualification and accordingly Mr Garner is not a suitable comparator. The claimant was not qualified to apply for the position of a trainee solicitor.

137. Although the claimant does not identify Mr Steatham as a comparator in the List of Issues, in her statement she relied on him as a comparator. As we have stated previously, we find that Mr Steatham is not an appropriate comparator because at the relevant time he had already at least 12 months' experience in Post Completion. He is also not an appropriate comparator because the claimant had not successfully completed her probationary period and there were concerns about her performance whereas there were no performance issues with Mr Steatham.

138. The Tribunal is not satisfied that the claimant has adduced any evidence to suggest that the reason she was not promoted was her nationality. Accordingly the burden of proof does not shift.

139. However, if the Tribunal is wrong about this and the burden of proof has shifted the Tribunal is satisfied there is a non discriminatory explanation. The claimant was not promoted to a paralegal position or to an accounts position because firstly she did not apply for such roles, and secondly even if she had applied, she had not successfully completed her probation in her role as an assistant in the post completions department where there were real concerns about her performance in that role.

(vi) Being allocated more complex files – real comparator Kelly Millar and Lizzie Welch.

140. We rely on the evidence of Ms Littlewood at paragraph 17 and paragraph 25 of her statement to find that the claimant was not given more difficult files than Lizzie Welch or Kelly Millar. In fact as time went on we find that Ms Littlewood and Ms Booini purposefully gave the claimant easier files to assist her with staying on top of her workload. We find that legal assistants were meant to take files in order of priority but because the claimant was picking and choosing her files Ms Booini and Ms Littlewood took to allocating her files. We rely on Ms Littlewood's evidence and Ms Booini's evidence that she was given the easier files, namely the purple files and the files which were in good order i.e. those of Claire Egerton.

141. We find the only files that Ms Booini allocated that the claimant may have considered to be more complicated were the Redrow property files. We rely on Ms Booini's evidence that that company tended to bind their files in such a manner that they were physically very difficult to open and scan onto the system and the claimant had a good knack of opening them. Accordingly we find that the claimant was asked to do this more but we rely on the evidence of Ms Booini that the content of those files was basically the same as the other files and they were no more difficult to deal with.

142. We find Lizzie Welch joined the respondent in July 2016. We rely on the evidence of Ms Littlewood in cross examination that because she was completely new to legal work initially she had simple files to work on but then as time went on she was given more complicated files.

143. The claimant sought to suggest that "plots" files were more complex. We rely on the evidence of Ms Littlewood that a "plot" is either a freehold or a leasehold property sold by a developer and divided into plots. The Tribunal finds that the claimant was given a half day training by Ms Littlewood on plots files. We find that the "plots" files were not more complex files.

144. The Tribunal finds that the claimant was not allocated more complex files than Lizzie Welch before July 2016 because the Tribunal finds that Lizzie Welch did not join the respondent until July 2016. The Tribunal finds that in the period July 2016 until the claimant's dismissal it is likely that Lizzie Welch was in her initial training period with no previous legal experience and for that reason probably was allocated straightforward files.

145. However the Tribunal also relies on the evidence of Ms Booiini and Ms Littlewood that by this stage they were aware the claimant was struggling to do the work properly and she too was allocated easier files.

146. The Tribunal is not satisfied that the claimant was allocated complex files than Kelly Millar. The Tribunal finds that from May onwards the claimant was being allocated the easier files.

147. Accordingly the allegation fails at this stage.

148. However if we are wrong about that and the claimant was allocated more complex files than her comparators, we are not satisfied the burden of proof has

shifted. The claimant has not adduced any evidence to suggest that the reason she was allocated she more complex files was her nationality.

149. However, if the Tribunal is wrong about that about that and the burden of proof has shifted the Tribunal is satisfied the respondent has shown a non-discriminatory explanation. Lizzie Welch was allocated less complicated files because she was new, commencing with the respondent on 4 July 2016 in Post Completions and had no previous legal experience.

150. The claimant was allocated some more complex files in the beginning of her time with the respondent but that was because she had told them she had 6 months previous experience as a conveyancing para legal. By May it was clear she was having difficulty with the work and she was allocated easier files.

151. For the reasons above, all the allegations of direct discrimination are not well-founded and fail.

Racial harassment and/or religious harassment – section 26 Equality Act 2010

(2) Did Georgina Booini engage in unwanted conduct with the claimant which related to the protected characteristic of race and/or religion when she allegedly stated to the claimant:

(a) On 24/25 August 2016 that the claimant was "nothing special" and that the claimant was "not a princess"?

152. When Ms Booini (GB) gave evidence, the claimant was not present because her evidence was heard on 8 February 2021 when the claimant did not attend. Accordingly the Tribunal asked questions of Ms Booini.

153. The Tribunal found that the claimant agreed the first time she informed the respondent of this comment was at her appeal hearing. She said, "GB raised her voice and said, 'you're not a princess' in front of Kelly. I was very embarrassed."

154. In her claim form the claimant stated Georgina "verbally abused me in front of Kelly (English staff). She raised her voice and told me that I was rude and that I was 'nothing special and not a princess'".

155. In her statement of evidence the claimant went further. She said that on 24/25 August Ms Booini said, "do these fucking files, get on with your fucking job". She then stated, "you are nothing special and you are not a princess". She then said, "Zohreh, you are so rude, what are you talking to Kelly about, you are rude", then "Zohreh, if you have something to say you can say it to me in the staffroom. Come with me to the kitchen now". The claimant said, "I went to the staffroom with her, she got face to face with me about 2-3 inches and I felt very intimidated then she started shouting again"

156. We find at a meeting with Ms Millican on 21 November 2016 following the claimant's allegations in the appeal meeting, Ms Booini was asked about the claimant's allegations.

157. Ms Booini admitted saying to the claimant she was a princess. She said her words were something along the line of, "come on, Zohreh, you're not a princess, you need to work on the files allocated to you".

158. Ms Booini was asked by the Tribunal whether she made the comment the claimant was *"nothing special" and that the claimant was "not a princess".*

159. She agreed that she had said to the claimant that she was not special and not a princess, but she explained she had made the remark in a light hearted way in the context of the claimant not being able to pick and choose which files to work on. She also said she had made that comment to other members of the team on other occasions if the team member was trying to pick and choose which files to work on. In particular she had made the remark to Shaun Steatham who found it amusing that she suggested he was a princess.

160. The Tribunal finds it surprising that the claimant's most detailed account of the incident is in her witness statement for the Tribunal proceedings which was produced in 2018, some very considerable time after the incident in 2016. The claimant's explanation for why she did not raise her concerns with Sarah Millican at the time it occurred was because she was worried about her job. Her explanation for why she did not raise it with Mr Hickey is that he cut her off when she tried to tell him about it at the appeal meeting. She did not have any clear explanation as to why she had not included it in her further and better particulars document or in her claim form.

161. The Tribunal finds that the claimant's recollection of what occurred closer to the time is more likely to be accurate. The Tribunal finds that the words were spoken as Ms Booini candidly admitted to Ms Millican before the Tribunal proceedings began namely to(the effect of: "come on, Zohreh, you're not a princess, you need to work on the files allocated to you, you are not special".

162. The Tribunal turns to consider whether, having found the comment was made as set out above, it is related to the protected characteristic of race and/or religion. The Tribunal is not satisfied that the claimant has adduced any evidence to suggest that the comment was related to her race or religion. The Tribunal is satisfied by the explanation of Ms Booini that although she did direct that comment on that day to the claimant, she had directed the same comment to other members of the team, in particular to Shaun Steatham when they tried to pick and choose files.

163. Accordingly, the Tribunal finds that the conduct was not related to the protected characteristic of race or religion and the allegation fails at this stage.

(b) In September 2016 that "educated people are stupid".

164. The Tribunal has taken into account the date when the comment was made. The Tribunal finds that this was around the time Ms Booini became aware of the problems with the claimant's work and had a conversation with her where the claimant had not accepted responsibility for the problem (see page 347).

165. Insofar as allegation (b) is concerned, once again Ms Booini candidly admitted that she said, "educated people are stupid". She said the claimant had taken this remark out of context. She said she made the comment but it was to the team in general, not to the claimant, and it was on the basis that just because a person is

highly educated it does not always mean they have common sense. We find the claimant considered the comment was directed at her because she is a scientist. (See her CV- which lists a degree in chemical sciences from the University of Salford.)

166. The Tribunal finds that Ms Booini directed the comment at the team generally. The Tribunal finds that at least one other person within the team was highly educated to degree level: Richard Garner had completed his LPC.

167. We found Ms Booini to be a forthright and direct witness. We accept her evidence that the reason she made the comment was that Post Completions was essentially an administrative department. She said that people who were highly educated sometimes unnecessarily complicated administrative tasks and did not apply common sense. We find there was no evidence to suggest that the comment was related to the claimant's race or religion, or even that the comment was directed at the claimant.

168. Accordingly, this allegation fails at this stage.

(c) In September 2016 that "we all know you don't know your alphabet".

169. Ms Booini accepted she made a general comment to members of the team to the effect of "come on who doesn't know their alphabet" in the context of files being put away in the wrong order.

170. We find that Ms Booini became frustrated when files were placed in the incorrect order. She told us that once files had been worked on they were to be filed in a metal filing cabinet in alphabetical order. When documents were returned from the Land Registry the file was pulled and the title deeds were added. This job became very difficult when there was a lot of mis-filing. There were 8-10 people working in the team and she regularly reminded them there was a problem with filing in words such as "come on you guys, who doesn't know their alphabet?".

171. We accept Ms Booini's version of events. We find it is consistent with a contemporaneous email on 7 July (page 299) where she politely asked the claimant in relation to filing, "Hi, please can you put your files in block alpha order. So if the client's last name is Ward that file is placed with all the other W files in drawer. Any questions give me a shout. Ta." She ended the email with a smiley face.

172. The claimant told us in cross examination that she found that insulting and thought it was a good example of Ms Booini showing that she thought the claimant was stupid.

173. We find that Ms Booini was simply informing the claimant, as with other members of the team, that it was important that the files were placed in alphabetical order.

174. We rely on Ms Booini's evidence to find that she directed the comment "come on who doesn't know their alphabet?" to the whole team. We are not satisfied that the claimant has adduced any evidence to suggest that the comment was directed at the claimant because of her nationality or religion.

175. Accordingly, we are not satisfied that the conduct was related to race of religion. The allegation fails at this stage.

> *(d) On unspecified dates spoke about her views on Muslim and Iranian men, specifically talking about how badly her ex-husband had treated her and how Iranian men do bad things to English women but they always end up marrying a Muslim girl.*

176. As with the other comments, the claimant did not raise this comment at her dismissal or during the course of her employment. She first mentioned it at the appeal hearing (see page 388), "ZZ from Persia. GB married to a Persian guy and talks about how awful he was to the team. ZZ feels GB treats her badly because of this. GB telling everyone how her son treats her badly and is like her ex-husband. ZZ felt sorry for her and bought her chocolates and was dismissed later that day".

177. Later on, the claimant expanded the allegations:

> "She always talked about her ex-husband who has the same nationality as me. She talked about how badly he treated her and a few times she said in front of all the other staff how Muslin and Iranian men do bad things to English women but they will always end up marrying a Muslim girl. She said Muslim and Iranian men are only after sex and they abuse English women. As a Muslim and an Iranian that offended me because there are good and bad people everywhere and just because her Iranian Muslim husband treated her badly it did not mean that all other Muslim or Iranian men were the same. These comments were made several times including on 7/8 September 2016." (Further and better particulars)

178. In the ET1 the claimant alleged Ms Booini always talked about her ex-husband "who has the same nationality as me and how badly he treated her, and a few times said in front of all other staff how Muslim men do bad things to English women but will always end up marrying a Muslim girl. As a Muslim I was offended by that because there are good and bad people everywhere and just because her Muslim husband treated her badly it did not mean that all other Muslim men were the same".

179. By the time the claimant completed her statement of evidence she had expanded the allegations about Ms Booini to comments at paragraph 16 about a dinner date of another employee with a Muslim man and a reference to sexual activity, a further reference to comments about her husband at paragraph 24 of her witness statement (page 17) and alleged, "when she went to Iran she was forced to wear the hijab. He was verbally abusive and never respects her".

180. Ms Booini has a different recollection about what she said.

181. The Tribunal finds that Ms Booini told Ms Millican at an interview following the claimant's appeal hearing on 21 November 2016:

> "Georgina said she remembers the conversation. She and the rest of the team were talking about marriage and Georgina said she didn't think she was cut out for marriage as she had been married twice and both had failed. She spoke about her second marriage which was to an Iranian and how she

converted to Islam and moved to Iran but it hadn't worked out with him as he was very strict and she just couldn't get used to his way of life, she had gotten upset about the situation. The next day Zohreh had brought her in some chocolates to cheer her up so at no time did she think she had upset or offended her in any way, and that was certainly not her intention. She had not been negative about the religion."p421.

182. Ms Booini confirmed to the Tribunal that the discussion had been a discussion between members of the team about marriage and she had told them about her own personal experience. She had spoken about her marriage and stated her ex husband had treated her badly but it had not been an abusive marriage and she had entered it willingly. She said the relationship had soured later, particularly when after returning together to the UK her husband had wished to return to Iran with their son.

183. We find that although at the Tribunal the claimant said that she gave Ms Booini chocolates to "kill her with kindness", we find it is more likely that her explanation at the appeal hearing closer in time was more accurate, in that she "felt sorry" for Georgina Booini and that was why she had brought her a gift of chocolates.

184. The Tribunal prefers Ms Booini's recollection of events. The Tribunal finds Ms Booini to be a clear and forthright witness. The Tribunal has found that the claimant's memory is sometimes unreliable. In the Employment Tribunal she was sometimes contradictory when answering questions. For example, in relation to the clutter item initially she said she was unaware of the problem of items going into her clutter folder in May 2016 but later in cross examination accepted that she was aware of the problem at that time. The Tribunal finds that if the stronger allegations she made against Ms Booini in her witness statement had occurred, it is likely that the claimant would have mentioned them at the very least at the appeal stage, and more likely at her dismissal hearing.

185. We turn to consider the relevant legal questions. Did Ms Booini engage in unwanted conduct related to race or religion?

186. We find that Ms Booini made the remarks as set out in the meeting with Ms Millican on 21 November 2016. We find she did not say that "Iranian men do bad things to English women but always end up marrying a Muslim girl." We find the claimant did not say that at her appeal hearing. We find the comments made at the appeal hearing by the claimant are more likely to be accurate because they are closer in time to when the conversation occurred and when the claimant's memory was clearer.

187. We turn to consider the comment that we find Ms Booini did make namely that she had been badly treated by her ex husband who was Iranian. Was that unwanted conduct related to race and/or religion?

188. We find it was related to race because Miss Booini referred to the fact her ex husband was Iranian and it was related to religion because later in the conversation she referred to converting to his religion. (Islam)

189. We turn to the next stage of the test, which is was the conduct unwanted? The claimant says now that it was. However at the time she gave Ms Booini a gift of

chocolates the following day which we find inconsistent with the conduct being unwanted.

190. However given the claimant says now the conduct was unwanted we turn to the next legal question. Did the conduct have the purpose of violating the claimant's dignity or creating a hostile, degrading, humiliating or offensive environment for her?

191. We find that it did not have that purpose. We find that Ms Booini was simply describing her personal situation. We find she had no intention of offending the claimant.

192. We turn to consider whether Ms Booini's conduct had the effect of either violating the claimant's dignity or of creating a hostile, degrading, humiliating or offensive environment for the claimant. We remind ourselves that we must take into account the claimant's perception, whether it reasonable for the alleged conduct to have that effect, and all the circumstances of the case.

193. The claimant says now that she was upset and humiliated by Ms Booini's comments. However, we find that is at odds with her bringing chocolates in for Ms Booini the following day and informing the appeal hearing that she felt sorry for Ms Booini. We rely on our finding that Ms Booini was simply describing her personal situation and how her marriage had not worked out in a general conversation with team members about marriage. We find, taking into account in all the circumstances of the case that it was not reasonable for the conduct of Ms Booini to have the alleged disadvantageous effect.

194. Accordingly, this claim fails.

195. Therefore the claimant's claims of harassment also fail.

196. There is no need for the Tribunal to consider the issue in relation to time limits and the claimant's claims because this is irrelevant given all claims have failed.

Employment Judge Ross

Date 8 March 2021

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

8 March 2021

FOR THE TRIBUNAL OFFICE