Case No: 1803196/2021
1801111/2022

EMPLOYMENT TRIBUNALS

Claimant: Ms G Trif

Respondent: NHS Hull Clinical Commissioning Group (1)
Ms S Lee (2)
Ms M Stephenson (3)

Heard at: Hull **On:** 20, 21, 22, 23, 24, 27 & 28 February and 1, 2 & 3 March 2023

Before: Employment Judge Miller
Mr K Lannaman
Mr D Wilks OBE

Representation
Claimant: Mr D Patel – counsel
Respondent: Mr D Bayne – counsel

JUDGMENT having been given on 6 March 2023 and sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant was employed from 22 February 2021 to 4 November 2021 by the first respondent as an Equality and Diversity Manager.

2. The first respondent (the CCG or Hull CCG) was, at the relevant time, a Clinical Commissioning Group with responsibility for commissioning services from health providers, including GPs, in Hull. Since the time this claim was about, there has been a reorganisation and what was Hull CCG is now part of a wider organisation called the NHS Humber and North Yorkshire Integrated Care Board. This new organisation also includes what was formerly North Lincolnshire Clinical Commissioning Group.

3. The second respondent, Ms Susan Lee, was the claimant's line manager and the Associate Director of Communications for the Hull area at the

relevant time. She was part of the panel that interviewed and appointed the claimant to the role. Ms Lee was also the Equality, Diversity and Inclusion Lead (EDI Lead) for the CCG. Ms Lee was line managed by Ms Erica Daley who was the Chief Operating Officer for Hull CCG.

4. The third respondent, Ms Moira Stephenson, was employed at the relevant time by the CCG as a Human Resources Manager. She was line managed by Emma Kirkwood who was the Head of HR.

5. The claimant made a claim of race discrimination and breach of contract on 14 June 2021, while she was still employed by the respondent. She made a further claim for race discrimination and victimisation on 28 February 2022.

6. There was a case management hearing on 24 May 2022 at which the issues were identified and recorded by EJ Morris. Those are the issues that we have determined at this hearing. They are claims of Direct Race Discrimination, Harassment related to race, victimisation and breach of contract.

7. The breach of contract claim was included in the first claim while the claimant was still employed. It was agreed that the Tribunal does not have jurisdiction to consider a breach of contract claim while a claimant is still employed. The claimant made an application to amend her second claim on 25 April 2022 to include that claim for breach of contract which we allowed as that application was not opposed at this hearing.

8. There are 18 specific allegations of harassment and direct discrimination and additional allegations of victimisation. The allegations and issues are attached as appendices to these reasons.

9. At the start of the hearing, the claimant was invited to withdraw the claims against the second and third respondents on the basis that the first respondent would be liable for any successful claims. The claimant declined to do so and, in our judgment, the circumstances in which the tribunal can remove parties under rule 34 are limited to those circumstances where it appears the respondents are wrongly included. This is plainly not the case in this case as the claimant does have the right to bring claims against named individuals under s 110 Equality Act 2010.

10. We have been provided with a substantial agreed bundle of documents and additional documents which we admitted for reasons given at the time. We have had a witness statement from the claimant and from each of the nine witnesses on behalf of the respondent. The respondent's witnesses are:

    a. Ms Susan Lee – Associate Director of Communications and Engagement for the Hull Area and second respondent

    b. Ms Moira Stephenson – Human Resource Manager and third respondent

    c. Ms Emma Kirkwood – Head of Transformational HR

d. Ms Helen Davis – Now Interim Director of Nursing and Quality for the North Lincolnshire Place and at the relevant time Deputy Director of Nursing and Quality with the delegated lead, for the Equality, Diversity and Inclusion portfolio within North Lincolnshire CCG

e. Ms Amanda Heenan – Equality, Diversity and Inclusion Consultant for the first respondent

f. Ms Clare Linley – Formerly Strategic Lead for Nursing and Quality and Hull and North Lincolnshire CCGs

g. Ms Karen Marshall – Formerly Lay Member for NHS Hull CCG with responsibility for Audit, Remuneration and Conflicts of Interest

h. Ms Toni Yel – Head of Integrated Commissioning and CCG Covid Vaccine Place Lead for Hull CCG

i. Ms Alexandra Seale – Formerly Chief Operating Officer at North Lincolnshire CCG.

11. All witnesses attended and gave oral evidence.

12. We have also heard and considered detailed submissions from Mr Patel on behalf of the claimant and Mr Bayne on behalf of the respondent.

13. We extend our gratitude to the parties and their representatives for the proportionate and courteous way in which the cases for the parties have been presented.

Findings of fact

14. We have not made findings about every disputed issue. As far as possible we have limited our findings to matters directly related to the list of issues. We have also had regard to the surrounding circumstances in reaching our conclusions, even if we have not referred to them directly in our judgment. Where it is not explicit, we have decided any disputed issues of fact on the balance of probabilities.

15. The claimant applied for the job of EDI manager and she was interviewed, remotely on MS Teams, on 20 January 2021 by a panel comprising of Ms Lee, Ms Helen Davis and Ms Amanda Heenan. Ms Heenan was, at the relevant time, a consultant who had been engaged by the CCG to provide specialist EDI advice. She had worked with the CCG for many years. Ms Davis was at the relevant time the deputy director of Nursing and Quality for North Lincolnshire CCG. She was the EDI lead for that CCG.

16. The reason that Ms Davis was on the interview panel was because although the claimant was employed by Hull CCG, her job was to be split between Hull and North Lincolnshire CCG.

17. The claimant was successful in interview. All three interviewers were impressed by the claimant in interview and Ms Heenan said that she felt a professional connection with the claimant.

18. The following day, Ms Lee called the claimant to offer her the job subject to references and other clearances. The claimant says that in that call Ms Lee said "I noticed you have an accent", asked the claimant where she was from and commented "it seems we attract Eastern Europeans".

19. Ms Lee did comment on the claimant's accent in that phone call and asked where she was originally from. The claimant said that she was obviously and deliberately trying to avoid answering the question because she did not want Ms Lee to know she was Romanian. However, we prefer Ms Lee's account that the conversation was by way of friendly chat. Ms Lee also, on a different occasion, asked another colleague who was from the South of England where he was originally from on the basis of his accent. We find that even if the claimant was trying to avoid telling Ms Lee that she was Romanian, that was not obvious to Ms Lee.

20. In respect of the allegation that the claimant said "it seems we attract Eastern Europeans" we prefer Ms Lee's evidence that she had a general conversation about one of the claimant's new colleagues who was from Poland. This was in the context of discussions about members of the team generally.

21. We prefer Ms Lee's evidence that the claimant did not give any appearance of taking offence at this conversation at the time. The claimant has taken it as a hurtful or judgmental comment on the basis of her previous experience. She said she felt labelled as a result of this and said that in the initial conversation she had tried to make it clear that she did not want to disclose her ethnic background. We cannot comment on how the claimant felt or her past experiences. Although we heard no direct evidence about specific instances, we accept that the claimant is likely to have experienced discrimination in the past because of her nationality. Objectively, however, there was no reason to believe that the comments Ms Lee made were anything other than small talk in the context of a welcoming conversation.

22. The claimant also took issue with, and relied on (as evidence of discrimination), the fact that Ms Lee subsequently emailed HR on 29 January 2021 to say that the claimant was 'actually a Romanian National'. This was in the context of establishing the claimant's right to work in the UK. The claimant said that there was no need for Ms Lee to even mention her nationality or, in fact, get involved with her right to work status at all as this was an HR function.

23. That might technically be true but we can see nothing sinister about this email. It is no more than Ms Lee seeking to give HR the information they needed to process the claimant's employment. We certainly do not draw any links between this email and the conversation on 21 January 2021.

24. The claimant also said that in that conversation on 21 January, once Ms Lee discovered she was Romanian, she brought the conversation to a swift

end without discussing where on Band 6 the claimant's salary would start. More generally, the claimant was of the view that the tone of the conversation changed immediately and that Ms Lee from then on resolved to make life difficult for the claimant because of her Eastern European or Romanian background.

25. We observe that Ms Lee interviewed the claimant and would have been perfectly well aware of her accent at the time. It simply makes no sense to assert that Ms Lee appointed the claimant, having spoken to her and then, on the basis of one conversation about where the claimant was from, decided to work to undermine her and make a decision to remove her from the organisation which was the claimant's case.

26. On the same date that Ms Lee contacted the claimant to offer her the job, she sent an internal form to HR requesting that the claimant be appointed at the bottom of Band 6. The job was graded at Band 6 which ran from £31,365 to £37,890 pa. The respondent's policy under its "Starting Salary and Reckonable Service Policy" is that by default new employees will start at the bottom of the relevant band. There are exceptions to this relating to moving between similar jobs in the NHS where the claimant has more than 12 months experience in the similar role.

27. Immediately before the claimant was appointed to this role she was working for another CCG on a programme relating to mortality rates of people with learning disabilities. This was a fixed term contract at Band 7 (higher than the claimant's band in the new job).

28. The claimant had been undertaking this role for only 4 months when she was appointed to the role at Hull CCG and we find it was not a similar role. There is also a general discretion under the policy to appoint at a higher starting point in the band dependant on general experience. This required the approval of the relevant Director (Erica Daley in this case) and verbal offers must not be made at a point higher than the bottom of the relevant band.

29. Ms McFadden (HR) wrote to the claimant on 17 February with a formal written offer of the job with a starting salary at the bottom of Band 6.

30. The claimant raised this with Ms McFadden on 17 February 2021, who in turn discussed it with Ms Lee. The claimant thought she should have been appointed at a higher point.

31. The claimant raised it directly with Ms Lee on 18 February. Ms Lee sought advice, reviewed the claimant's experience and recommended to Ms Daley on 18 February 2021 that the claimant be appointed to the top of Band 6 because of her long and specialist experience in the field of EDI. Ms Lee told the claimant the same day, on 18 February 2021, that she was recommending that the claimant start at the top of Band 6.

32. Erica Daley approved that recommendation on 19 February 2021, it was signed off by HR (Ms Stephenson) the same day and it was formally

communicated to the claimant on 26 February 2021 in amended terms and conditions.

33. The claimant said that Ms Lee should have concluded from the claimant's experience as set out in her application and interview that the claimant was entitled to be appointed at a higher band. She should not have needed to challenge the initial grading.

34. We do not agree. Ms Lee followed the policy appropriately and quickly. The reason that the claimant was appointed at the bottom of Band 6 was because that was wholly in accordance with the CCG policy. Ms Lee, Ms Stephenson, Ms McFadden and Ms Daley acted very promptly and properly in addressing the claimant's concerns. We can find absolutely nothing wrong with how they dealt with the claimant's starting salary and, despite the tribunal asking the claimant directly, we can find no objective evidence at all to link the acts of Ms McFadden, Ms Stephenson, Ms Daley or Ms Lee in this incident to the claimant's nationality or ethnic origin.

35. The claimant started working for the CCGs on 22 February 2021. Her employment was subject to an initial 3 month probationary period. She attended the office on his day to collect some IT equipment and this was the only occasion on which the claimant attended the office. The claimant was living in Liverpool at that time. Covid was still preventing people from travelling or attending work as often as they might otherwise do and it appears to have been agreed that the claimant would work remotely.

36. All meetings we refer to throughout the rest of the claimant's employment were held by video or telephone.

37. The next relevant incident is that on or about 9 March, the claimant was sked to stop using Doctor as her title in her email signature. The claimant has a PhD in Social Policy. She is not a medical doctor or clinician.

38. Ms Lee sent an email to the claimant on 9 March 2021 in which she said

    "Whilst you are quite rightly very proud of your PhD, and I know the use of the title is common place in academia, in NHS employment it is not usual practice to put Dr as your title on an email signature unless you are a clinician, as this can lead to confusion and misplaced assumptions about levels of medical expertise".

39. The claimant had previously used the title 'Dr' while working for Wirral CCG and we were shown documents where an external consultant had used a non-clinical 'Dr' title in a report.

40. We prefer Ms Lee's evidence that the reason for bringing this practice to the claimant's attention was, as it said in the email, to avoid mistaken assumptions about the claimant's level of clinical expertise. There are a number of medical doctors in non-clinical posts in the CCGs and we agree that confusion might arise. The tone of the email was friendly and Ms Lee made it clear that the claimant can continued to include her PhD in her title as something of which she should be rightly proud.

41. We observe that it is generally up to the employer to set the rules for email signatures. We did not see any evidence suggesting that this was a formal CCG policy, but whether this was a reasonable decision of Ms Lee or not (and we think it was) we find that it was for the reasons she said and not in any way because of or connected to the claimant's race or nationality.

42. The next allegation is that on 10 March 2021, in a meeting with Ms Heenan, Ms Lee excluded the claimant from reviewing the Equality Impact Assessments in her role as EDI Manager and being informed that "Amanda is to review the EqIAs… she is the expert."

43. It is appropriate to discuss the nature of the claimant's job at this point.

44. We were taken to the claimant's job description on a number of occasions by both parties. The claimant's job was to provide specialist operational support for the delivery of the equality, diversity and inclusion agenda in line with the Public Sector Equality Duty and the CCG Equality Delivery Scheme. The job description said:

    "The postholder will have day to day responsibility for managing equality, diversity and inclusion work and will project lead, manage and coordinate work on behalf of both Hull and North Lincolnshire Clinical Commissioning Groups. They will provide expert advice to staff and managers on the full range of equality, diversity and inclusion issues relating to both employment and service delivery, in respect of good practice and legislation".

45. The respondent was keen in the hearing to emphasise the operational aspects of the role, the claimant was keen to emphasise the developmental, engagement and advisory nature of the role.

46. In our view, the job had a wide ambit requiring a degree of expertise but the delivery of tangible results was of primary importance. Ms Heenan referred to the delivery plan. This required a degree of hands on actual work and some administrative and operational jobs – and actually getting things done. It was also very important to maintain and develop relationships within the CCGs and with their partners (including commissioners and providers of services) to be able to integrate the EDI outcomes into the work.

47. The relationships were delicate – both internally and externally – and it was important that the claimant understood those relationships and not do anything to harm them in the initial stages of her job.

48. It was also important that the claimant undertake the day to day operational work such as organising and co-ordinating matters identified by Ms Lee, Ms Heenan and Ms Davis.

49. The particular allegation arose from email correspondence the claimant had with Mr Lee Pepper, the CCG Head of Procurement, about an EQIA Mr Pepper had produced in respect of a new service. As we understand it, an EQIA is a document created to assess the impact on various groups of people of a proposed decision by the CCG, with particular regard to groups defined by their protected characteristics or other factors that might make

them vulnerable to an adverse impact of a decision by a public body. It therefore requires an understanding of the demographics of the relevant affected area and the organisation's roles, structures and policies, as well as an understanding of sociological aspects of EDI more generally.

50. Mr Pepper had had a conversation about the EQIA with Ms Lee who had asked him to send the EQIA to the EDI email inbox. This was, as the name suggested, an inbox for the team in which the claimant worked. The claimant and Ms Lee had access to this, Ms Heenan, as an external consultant, did not. On receiving the draft EQIA, the claimant made some comments and replied to Mr Pepper the same day. The claimant did not discuss her comments or feedback with Ms Heenan or Ms Lee.

51. It is not clear on what date Ms Lee became aware of this, but it was when the final version of the EQIA was sent through to be signed off. At that point, it appears, Ms Lee was concerned that the claimant had undertaken the EQIA review without consulting her or Ms Heenan. On 4 March 2021, a meeting was arranged for 10 March 2021 with the claimant to discuss this (amongst other things).

52. We prefer Ms Lee's and Ms Heenan's account of the meeting on 10 March. We find that it was explained to the claimant at this meeting that her then role in respect of the EQIAs was to monitor the EDI inbox for new EQIAs coming in and to then forward them to Ms Heenan for review. We think it is likely that Ms Lee did refer to Ms Heenan's expertise, but in the context that Ms Heenan was engaged by the CCG, and had been for many years, as an external expert on EDI. Although the claimant obviously had a great deal of theoretical knowledge and academic experience, she was unfamiliar with the CCG processes and the characteristics of the local area so that it was obvious she would need some time to gain more detailed understanding and experience before undertaking reviews of the EQIAs herself. It was the CCG's intention that this was something the claimant would do at some point but after being guided and mentored by Ms Heenan.

53. We find that this was a reasonable conversation for Ms Lee to have with the claimant, the reason for it was to ensure that the claimant understood her role properly at that time and that it was in no way connected with the claimant's race. We also find that the tone and manner of the conversation was reasonable and measured.

54. We note that by 2 March 2021, when the claimant undertook the review of the EQIA, she had been in post for only 7 working days. We agree with Ms Lee that it was surprising that the claimant did not consult at all with Ms Heenan or Ms Lee on the appropriate process for reviewing EQIAs in light of her relative unfamiliarity with the CCG and the geographical area in which it provided services.

55. On 12 March 2021, Ms Lee sent the claimant an email summarising what was discussed on 10 March and setting out the claimant's work priorities for the next week. This was because Ms Lee was on leave the following week. The email makes it clear that the claimant is to check the EDI inbox and forward EQIAs to Ms Heenan. There is a reminder that the claimant is to

complete a briefing paper on BAME networks by the following Tuesday evening, but that she needed to send it to Ms Davis to review in advance of sending it to the person for whom she was doing the work. This work was originally allocated to the claimant on 9 March.

56. There is, in that email, a specific reference to the EDI steering group which, Ms Lee says, is on 22 March the day Ms Lee returns from leave. It is not explicit in that email that the claimant will be required to minute that meeting, but we prefer Ms Lee's evidence that the claimant had been made aware that notetaking at this group was part of her role. The meeting on 22 March was to be the first one held during the claimant's employment.

57. In the email of 12 March Ms Lee says:

"The next Steering Group meeting is on 22nd March which is the day I come back. Amanda will be updating the EDI workplan in advance of the meeting and sending it out with the notes and agenda. Please familiarise yourself with the plan before the meeting and again Amanda will be happy to talk through it in more detail when you meet. There is no specific action for you on this at the moment but going forward one of your main roles will be to be the link with the various leads for each of the outcome areas to monitor progress against the outcomes. We will discuss the development of a reporting framework when I am back off leave".

58. It is clear from this email that the claimant's role included operational aspects of the EDI steering group meeting, On balance, we think that Ms Lee had told the claimant previously that notetaking at this meeting would be one of her jobs.

59. We also find that the rest of the work referred to in the email was a reflection of ongoing work – some if it was clearly longer term and some of it was part of the claimant finishing her induction and training. Although we are not party to the detail, we find that this was not an overwhelming amount of work and, in any event, the claimant did not indicate at the time that she would have difficulties with the volume of work.

60. On the same day, 12 March, Ms Heenan sent the claimant a supportive email with some suggestions about starting in a new role. In her evidence, Ms Heenan says that she was in this email addressing her unease at the difference in their approaches. In our view, this is likely to refer to concerns Ms Heenan had about the claimant appearing to not have a sophisticated understanding of the organisation, its internal and external relationships and her role. The mail was not, however, explicitly critical of the claimant and, in our view it is not easy to identify Ms Heenan having any concerns from that carefully worded email.

61. The next allegation is that on 22 March, when Ms Lee returned from leave, the claimant was required at short notice to be the notetaker for the EDI Steering Group. As set out above, this was part of the claimant's job. Ms Lee emailed the claimant, about 20 minutes before the start of the meeting as follows:

"Georgiana please could you take the notes from the meeting? You will have seen the format and level of detail we normally capture and especially you will need to take notes of any actions. I will record it for you too"

62. The meeting was recorded as indicated and Ms Lee also took notes. The claimant responded : "Thank you for the email Sue, certainly I will take notes".

63. There is no indication that the claimant objected to taking notes, or even that she was surprised by the request at the time. We find that the reason the claimant was asked to take notes was because it was part of her job to do so, and she was aware of that. We further find that the claimant was supported in this new task by having access to a Microsoft Teams recording of the meeting and that she could compare her notes with those of Ms Lee if necessary.

64. The notes that the claimant did take were not acceptable to the respondent. They were not in the correct format and, in our view, obviously did not meet the standard required for formal notes. Ms Lee re-wrote them in the end.

65. On 31 March 2021 the claimant had her first probationary review meeting with Ms Lee and Ms Davis. Four objectives were set at this meeting:

    a. To understand the EQIA process for Hull and North Lincincolnshire CCGs. This included checking the EDI inbox and processing the EQIAs.

    b. Managing EDI action plans which included coordinating steering groups and, specifically, setting agendas, taking notes and checking progress on actions.

    c. Working with Ms Heenan to develop an EDI training offer.

    d. Working with EDI leads in Hull and North Lincolnshire to identify with whom relationships needed to be developed.

66. In that meeting there was a discussion about project management training. We find that Ms Lee agreed that she would explore options for the claimant undertaking an introductory level course in Managing Successful Programmes (MSP). This was the CCGs preferred project management system. We reject the claimant's assertion that Ms Lee committed to allowing the claimant to undertake the full MSP programme. We find that the contemporaneous notes, which are not inconsistent with the claimant's notes, are likely to be more accurate than the claimant's recollection and, in any event, it is inherently unlikely that any employer would make such a commitment so early in an employee's employment.

67. The next allegation is that on or about 27 April Ms Lee made a joke at a staff meeting about Eastern Europeans in the context of encouraging the take up of COVID Vaccines referring to the claimant and saying "perhaps we could learn more from Agnieszka and Georgiana how to get the eastern Europeans".

68. Agnieszka Zychowicz is Polish, and the person to whom Ms Lee referred in her first conversation with the claimant on 21 January 2021.

69. We find that Ms Lee did not make a joke about this. Ms Lee said "As part of this discussion I had specifically asked for any cultural insight from either Georgiana or Agnieszka Zychowicz, (the CCG's Communications Manager who is Polish). I made this request not to single out staff members but to ensure that we had considered anything relevant when developing our key messages. We were also engaging with community groups for input around what messages helped encourage residents to come forward for the vaccine. I don't recall Georgiana contributing any specific ideas and that was not a problem".

70. The claimant said that Ms Zychowicz was also upset by this comment and bent her head – she said that the offence of the comment would also have been obvious to everyone else in the meeting. We did not hear from Ms Zychowicz who no longer works for the CCG nor any of the other people at that meeting. However they were all, except from Ms Zychowicz, interviewed as part of the claimant's grievance and no person said that this conversation was improper or offensive.

71. We prefer Ms Lee's evidence of this and find that this conversation happened as described by Ms Lee. Ms Zychowicz went on to work with the CCG to encourage take up and we understand that her work received national recognition. This is, of course, not necessarily inconsistent with Ms Zychowicz being offended by the form or tone of Ms Lee's alleged comment, but it does tend to confirm that the subject matter of the conversation – namely looking to colleagues with potentially relevant experience for additional insight – was not inappropriate.

72. On the same day, 27 April 2021, the claimant received a report about racism from a group she had been working with called the Local Medical Committee (LMC). The LMC is an organisation of GPs which, as far as is relevant, represented GPs interests in the relationship with the CCG. GPs were providers of services commissioned by the CCG so that the CCG and GPs could potentially be on the opposite sides of a transaction or contract. It is obvious therefore, that the CCG and LMC's interests might on occasion not align, or even be diametrically opposed, even though they would seek to work together as far as possible.

73. The LMC Racism Report was written by the LMC. It was their document. We were not made aware of the specific detail of the report, but it included some personal accounts of racism and actions required of the LMC, providers and commissioners of services including Hull CCG. It was a sensitive document.

74. The document was sent to the claimant by Dr Zoe Norris on behalf of the LMC and the covering email said "I wanted you all to have early sight of this, before we share it with wider colleagues next week. I would appreciate if it remains internal to your teams until then".

75. Despite the clear instruction not to share the report more widely, the claimant misunderstood this and later that day sent a copy of the report to a number of people outside the claimant's team but within both CCGs and also to people outside the CCGs, including hospitals, community service providers, and general practices. The claimant's email also asked the recipients to share it further.

76. Ms Lee was also copied into the report and she immediately asked the claimant if she had Dr Norris' permission to share the report. The claimant said that the covering email invited further sharing. The claimant then reviewed the email and realised her mistake and recalled the messages although in the meantime Ms Lee had again emailed the claimant and clarified the email from Dr Norris.

77. The recall was not wholly successful and there was some further discussion about the report from one of the people the claimant had sent it to that could have caused problems for the organisations. Ms Lee expressed her concerns about this in an email to the claimant on 28 April and made it clear that she should check with Ms Lee before sharing information like this sent by third parties. The claimant did not appear to recognise the implications for the CCG in sharing widely a sensitive document like this where the CCG had not, by this stage, had time to reach a formal corporate view on the report.

78. The report was made public the next day and the claimant did this time double check with Dr Norris before sharing the report further.

79. There are then two allegations about 28 April arising out of a 1:1 meeting between the claimant and Ms Lee. The first allegation is that Ms Lee gave the claimant unproductive additional work to undermine her, in particular by requiring the claimant to submit a weekly tasks report every Monday going forwards; and that Ms Lee commented to the claimant "I am not trying to treat you any differently" and "that should keep you busy" when the claimant was busy performing her role and fulfilling expectations of her.

80. The second is that "the claimant informed Ms Lee that she would like more autonomy in her role to which Ms Lee responded "you come to me speaking about autonomy, there is no autonomy in this role"; "I as your line manager decide what your role is."

81. In short, we prefer Ms Lee's account of this meeting, although in reality the difference in Ms Lee's and the claimant's accounts are really a matter of perception. Ms Lee did require the claimant to create a workplan for the next week. However, the purpose of this was to ensure that the claimant focussed on her job working for the CCGs rather than getting pulled into work for other groups or organisations. This was in the context of the claimant saying that she was very busy - it was a standard, helpful tool to help the claimant focus on her work priorities.

82. In our view the plans we have seen would not be onerous to produce. Ms Lee said it would take about 10 minutes to create a bullet point list of the following weeks work consisting of planned meetings, new tasks and

ongoing tasks. We agree. Even if it was necessary to review document and emails we cannot imagine this would take any more than half an hour at the outside. Certainly nowhere near the 2 hours the claimant suggested, even in circumstances where she was experiencing a high degree of stress.

83. We find that this was intended as a supportive measure and the reason for Ms Lee requiring the claimant to do it was to help her prioritise her work and reduce the amount of non-essential work she was doing.

84. We find that Ms Lee did not say "that should keep you busy". That would be inconsistent with our findings about the reason for the work plan and we prefer Ms Lee's evidence about it.

85. We also find that the claimant has misremembered or misinterpreted the conversation about autonomy. The claimant did ask for more autonomy in her role. However, we prefer Ms Lee's evidence that her response was to remind the claimant that she needed to focus on the priorities set by her and Ms Davis and that the claimant's role was to provide specific operational support. In our view this is more likely to reflect the tone and content of the conversation which the claimant has misinterpreted as Ms Lee dogmatically saying "I as your line manager decide what your role is," and we find that she did not say those words.

86. We find that by this time Ms Lee was having concerns about the extent to which the claimant really understood the nature and scope of her role. This conversation was a reasonable response to those concerns.

87. In respect of the allegation that Ms Lee said I am not trying to treat you differently, we do not understand this to be a separate allegation of less favourable treatment or harassment. In the claimant's witness statement, she relies on this to the effect that despite saying this, Ms Lee was treating her differently to her colleagues. In any event, we prefer Ms Lee's evidence that she did not say these words.

88. The next allegation is that on 4 May Ms Lee denigrated the claimant at a Tuesday morning meeting when they were both praised by stating "This was in plan before Georgiana being in post" thus humiliating the claimant and undermining her work.

89. This allegation was difficult to understand. However in oral evidence the claimant clarified it as follows. The claimant was feeding back that she was making good progress on setting up the EDI leads meeting. The claimant believed that this was a new workstream/meeting to discuss EDI working across four CCGs including Hull and North Lincolnshire (in preparation for the later merger of them).

90. The claimant said that Ms Lee said "this was planned before Georgiana being in post" and that this was humiliating and she felt alienated in front of her colleagues. The claimant says that this was a deliberate lie to undermine her.

91. We prefer Ms Lee's account that she was explaining at the meeting that the work had been ongoing for the purpose of providing the context. This is unsurprising in the context of a potential future merger of the CCGs. We saw documentary evidence that it had been ongoing and the claimant cannot possibly have known about any previous discussions. In our view, the claimant's suggestion that the purpose of this comment was to humiliate the claimant or that it was because of her race is implausible. We think it likely that the claimant is now viewing this innocuous event through the retrospective lens of the litigation.

92. On 6 May the claimant had her second probationary review meeting which we will come to shortly. However, the next allegation relates to the discrimination and breach of contract claims.

93. The allegation is that "On 6 and 13 May 2021, the claimant requested not having to work unsocial hours for childcare commitments to Susan Lee, this was ignored and the claimant was forced to work these hours and was never paid this, which amounted to four hours pay".

94. In fact, the days when the claimant said she had to work additional hours were 29 April and 6 May. The claimant's evidence about this was not wholly clear. However, having considered the oral and written evidence, we find that the claimant did not work in excess of her contractual hours. She rearranged her working hours so that she could take a break to collect her child from school and attend to them in the afternoon and then completed her work, on these two occasions, in the evening after 8pm when her child went to bed.

95. On this basis, the claimant says that she was entitled to an unsocial hours payment under her contract.

96. Unsocial hours are defined as including hours worked after 8pm and before 6am. An unsocial hours allowance will be paid where appropriate in accordance to the relevant part of the NHS Agenda for Change (AFC) terms and conditions. We were not shown the AFC terms and conditions. Having considered the claimant's terms of employment and having regard to the Tribunal's general experience we find that it likely that additional payments, including those for unsocial hours, would only be payable where the CCG has agreed or required the claimant to work unsocial hours.

97. In fact, we understand that the claimant believed this to be the case as her case was that she had no choice but to work late because of the additional work she was given by Ms Lee. We are prepared to accept, hypothetically, that where a manager provides an amount of work and a deadline that realistically requires unsocial hours working, it would be possible to infer an obligation or instruction to work unsocial hours. However, in this case the claimant was clear that the additional work was the work plan. As we have found, this represented between ten and 30 minutes work at the very most.

98. In addition, it was clearly the claimant's choice to rearrange her working day to fit her childcare arrangements. The respondent has taken no issue with that, but that does not mean they required the claimant to do that.

99. We find, therefore, that the claimant was not forced to work unsocial hours after 8pm, she decided to do so for her own reasons.

100. We also find that the claimant did not request not to work the unsocial hours or for payment for the hours she had worked. The only discussion about it was about when the claimant would take 4 hours flexi-time she had accrued.

101. We now consider the claimant's second probationary review meeting with Ms Lee and Ms Davis which had been delayed because of diary difficulties. At this meeting, the claimant's objectives were reviewed. The claimant said in oral evidence that, effectively, these minutes were contrived between Ms Stephenson, Ms Lee and Ms Davis. However, the main points with which the claimant took issue were relating to the project management training. We prefer the contemporaneous notes of the respondent and Ms Lee's evidence and find that at that meeting the claimant was again told explicitly that she could undertake the introductory stage of the MSP course but that future training needs would be considered as part of the ongoing Performance Development Review (PDR) process.

102. In the probation review meeting, Ms Lee and Ms Davis set clear objectives for the claimant including introducing a new objective to develop the claimant in respect of checking the EQIAs.

103. The next day Ms Lee sent an email to Ms Davis setting out her concerns about the claimant: that she continued to become involved in wider work outside her priorities and at a higher level than was appropriate and that she had had to make some changes to the claimant's work on a BAME Network paper to bring it to an acceptable standard.

104. We find that this email reflected Ms Lee's genuine concerns about the claimant's work at that time. We think it likely that Ms Davis and Ms Lee sought to focus the claimant on her internal CCG work but that no explicit concerns about the claimant's performance were raised with the claimant. In our view, Ms Lee, Ms Davis and Ms Heenan were still seeking to support, encourage and develop the claimant despite their concerns.

105. The next allegation is that on 12 May 2021, the claimant attended an online EDI Steering Group Meeting with Ms Lee and requested to join the discussion about transgender patient care experiences with Amanda Heenan. Susan Lee refused this request in a humiliating and undermining manner in front of everyone and commented "No, it is only for members of this group".

106. The claimant did attend the EDI steering group meeting on 12 May 2021 by Microsoft Teams. One of the matters discussed at that meeting was Transgender patient experiences. It was decided in that meeting to set up an event to discuss transgender patients' experiences relating to medical records and other issues. The event was intended to be hosted by the respondent with the aim of obtaining information, input and feedback from groups and individuals affected by these issues.

107. We prefer the evidence of Ms Lee and Ms Heenan that the claimant was explicitly asked to be involved in co-ordinating and setting up this group. It was initially unclear if the claimant was saying that she was excluded from discussions at the EDI steering group meeting, but she confirmed in oral evidence that the discussions from which she said she was excluded were the substantive discussion that the EDI group was discussing setting up.

108. Ms Heenan subsequently emailed the claimant on 14 May confirming her involvement in that group and said

    "So, for clarity, you're going to coordinate the meeting regarding Transgender Patient Experience, which will aim to explore:

    - What policies or protocols are in place regarding transgender patients, especially regarding record keeping once a patient has transitioned

    - How this is working in practice

    - How is this impacting on patient experience"

109. It could not be clearer, in our view that the claimant was expected or, in fact, required to set up this meeting about this issue. The claimant said that she was tasked only with producing a list of interested people. We prefer the evidence of Ms Lee that in fact she wanted the claimant's input into the event and for her to work with Ms Heenan to develop it. While this would undoubtedly have included creating a list of people who might be interested in the event, we find that it was also expected that the claimant would have substantive input.

110. In our view, co-ordinating an event such as this in the way described would include having a detailed understanding of the issues and working with Ms Heenan to understand how to explore those issues with the consultees in a meaningful way.

111. We find that the claimant was not told "no it is only for members of this group" by Ms Lee in repose to a request to join the discussion about Transgender care experiences.

112. We think it likely that the claimant's view is a reflection of her misunderstanding her role and her own deeply ingrained misperceptions, by this stage, of the respondent's view of her.

113. The next day, 13 May, the claimant had a one to one meeting with Ms Lee. The claimant alleges that at this meeting, she asked again for some more independence in her role and this was refused by Ms Lee. The claimant says she was told that "this is administrative level job only, nothing else" and that her role was "operational support." Ms Lee allegedly went on to direct the claimant to seek her approval and that of Ms Davis before accepting/attending any meetings, cancelled a Health Inequalities meeting the claimant was going to have and attempted to cancel a BAME Networks meeting as well.

114. A number of things were discussed at this meeting. In our judgment, the respondent's minutes of that meeting are a broadly accurate account of the discussions. The claimant did say that she needed more autonomy to bring about change. Ms Lee's response is recorded as

> "SL reiterated discussions in probation meetings and previous 1:1 discussion in that GT's initial focus needed to be on getting to grips with the operational aspects of the role and that she was managing the EDI processes (EqIAs, action plans etc.) As previously discussed SL was concerned that GT was getting drawn into other meetings and pieces of work that were outside of the agreed priorities and not necessarily supporting the Hull or NL EDI agenda. In order to protect her time, GT was asked to inform SL /HD of any meetings or work requests of this nature".

115. We find that this reflects Ms Lee's genuine view at the time. Ms Lee did refer to the operational aspects of the role – this had been made clear by then to the claimant on a number of occasions. We also find that Ms Lee was seeking to limit the number of external meetings the claimant attended that were not obviously a key part of her role. This was for the purposes of protecting the claimant's time in her new role and preventing her becoming overburdened.

116. It had also come to Ms Lee's attention that the claimant had been invited to attend a meeting that day of the LMC to discuss the racism report that the claimant had previously inappropriately shared. We find that at this meeting Ms Lee was explicit that the claimant was not permitted to attend the LMC meeting. The reason was that the report had not been presented to the CCG board by then and it was a very sensitive report. It would not be appropriate for the claimant to attend as a representative of the CCG when the board had not considered the report and formulated a response.

117. The claimant says Ms Lee either instructed or allowed her to attend in an observational capacity only. We prefer Ms Lee's evidence about this. The notes of the meeting are clear and there is other supporting evidence demonstrating in our view that Ms Lee explicitly told the claimant not to attend the meeting despite the claimant trying to persuade her to allow her to attend, even if just as an observer. Ms Lee offered to inform Dr Norris that the claimant could not attend but the claimant rejected that offer.

118. In respect of the allegation that the claimant was told to cancel her attendance at the BAME network meeting, we prefer Ms Lee's evidence that she was only seeking clarity about what this meeting was about and this is consistent with the notes of the meeting on 13 May. Similarly, in respect of the claimant's attendance at a Health Inequalities meeting, we prefer Ms Lee's evidence that the reason the claimant's attendance was questioned (and not prevented) was because Ms Lee and Ms Daley already attended and it was unclear why the claimant would also need to attend.

119. In our judgment, there is nothing wrong with anything Ms Lee did in this meeting. Ms Lee was reasonably trying to focus the claimant on her actual job for the benefit of both the CCG and the claimant (in order to reduce work pressures). The claimant's allegations are not wholly inconsistent with

what happened at that meeting but, again, in our view the claimant has misinterpreted Ms Lee's reasonable management of her as something sinister when it is not.

120. Notwithstanding Ms Lee's clear instruction, the claimant did attend the LMC meeting that afternoon. It was reported back to Ms Lee later the same afternoon that the claimant had been at the meeting and had become very upset and started crying. It was said that she had told the rest of the meeting, which included local GPs, that she had been told by Ms Lee that she should not be there, that Ms Lee should be doing the work and she was worried she would lose her job.

121. The claimant has said variously that she was not upset or that she was upset for a different reason. Although the evidence from Ms Lee about this is multiple hearsay – Dr Norris is reported to have told it to Ms Ellis (of the CCG) and Ms Lee did not discuss it directly with Dr Norris, we nonetheless prefer Ms Lee's account. There is simply no reason to believe that anyone would fabricate this account. In any event, we can and do find that Ms Lee reasonably believed Ms Ellis' account.

122. On 14 May Ms Lee contacted the claimant to arrange a meeting to discuss her attendance at the LMC meeting. This was put back to 17 May because the claimant was unwell. The same day the claimant submitted an informal grievance or complaint to Ms Lee and Ms Davis. The substance of the complaint is that the claimant felt she was not being allowed to do her role, that she was having to report weekly what she was doing and having meetings cancelled.

123. In the meantime, on 16 May, the claimant emailed Erica Daley setting out her complaints about how she believed she had been treated by Ms Lee and saying that she had been treated unfairly. The claimant says that this was part of the informal grievance and she wanted a discussion, effectively, with her line manager's line manager to resolve the issues.

124. Ms Daley acknowledged the email the same day and after taking advice from Ms Kirkwood, responded on 18 May. She said

> "I'm sorry to hear how you are feeling and acknowledge the issues you raise. However it may not be appropriate to meet with me at this time, I understand you have had support and advice from the HR team in regard to the grievance process. To ensure fairness to you and all the parties involved I may be required to become involved at the relevant stage, it would therefore be outside of that process if you and I were to meet now.
>
> Please continue to accept the advice and support available to you"

125. In our view this is a wholly unsurprising response in the circumstances. We prefer the respondent's evidence that they reasonably believed that Ms Daley might become involved at some point. Even if this was mistaken and Ms Daley could have met with the claimant to seek to resolve her grievances informally under the respondent's policy, we have heard or seen no evidence at all to suggest that this decision was in any way connected

with the claimant's nationality or ethnic origin. In any event, it is not correct to say that Ms Daley ignored the claimant's concerns, she did respond. She did not engage with them, however, because she did not consider it appropriate to do so and in our judgment, that was a permissible view for her to take and does not call for further explanation.

126. On 17 May the claimant attended the meeting with Ms Lee, Ms Davis and Ms Stephenson. Ms Lee had been taking advice from Ms Stephenson from April and had been discussing with her a potential extension to the claimant's probationary period from around 7 May 2021.

127. The claimant alleges that she was berated by Ms Lee and Ms Stephenson at that meeting for attending the LMC meeting on 13 May, that she was informed of unspecified issues about her employment and that reference was made to a fast track probation review suggesting that the claimant's employment was to be terminated.

128. There was a detailed discussion about the claimant's attendance at the meeting on 13 May contrary to Ms Lee's instructions. We find that the claimant was not berated, but that she was unable to provide a coherent or satisfactory explanation for her attendance and that Ms Stephenson and Ms Lee were attempting to get clarity from the claimant for the reasons for her attendance. It appears that the claimant still did not fully appreciate the reasons for her being told not to attend the meeting. The meeting lasted for an hour, half of which concerned the LMC meeting. However in our view the claimant was unable or unwilling to fully accept Ms Lee's and Ms Stephenson's explanation about why her attendance at the meeting was a problem. It was for this reason they were going round in circles – it was not the claimant being brow beaten for half an hour.

129. Other matters about the claimant's employment were discussed including the claimant's continued attendance at unnecessary meetings and the fact that the claimant was not keeping Ms Lee informed of work and meetings coming in directly to the claimant. They were not unspecified issues and they were discussed for a further half an hour.

130. Ms Lee is recorded as saying "This role isn't what GT wants and GT doesn't seem to be the right person for the role". In our view, this accurately reflects what Ms Lee genuinely believed at that time and is borne out by the evidence we have heard about the claimant's understanding of her role.

131. It is alleged that Ms Stephenson or Ms Lee referred to a fast track probation. We prefer Ms Lee and Ms Stephenson's evidence that this was not said.

132. It was, however, agreed that the claimant's final probation review would be heard on 24 May, five working days later, and that there would be a meeting on 21 May to discuss the concerns that claimant had raised about her job and JD in her email of 14 May.

133. The next day, 18 May, the claimant commenced Acas early conciliation and it is agreed that the claimant's employment relationship had broken down by

that time. On the same day, Ms Lee wrote to the claimant confirming that her final probation review would be on 24 May at 2pm and stating that that claimant has "the right to be accompanied at the meeting by a work colleague or trade union representative not acting in a legal capacity". The claimant was, the next day, separately advised by Ms Stephenson that "If you wish you are entitled to arrange to be accompanied at the meeting by a Trade Union or staff organisation representative, or a CCG colleague not acting in legal capacity".

134. On 20 May the claimant sent an email to a number of people outside the CCG including GPs and some senior NHS managers, as well as a member of the CCG board, asking if any of them would be prepared to accompany her to her final probation review. The claimant said she was nervous as the job meant very much to her. The board member who was copied into the email was concerned about this email and raised it with Ms Lee who was also concerned that the email appeared to contain information sent to the claimant in the invitation letter that Ms Lee and Ms Stephenson considered was confidential.

135. The next morning Ms Stephenson and Ms Lee had a discussion and they decided to suspend the claimant. Although it has not been made explicit, we think it likely that the decision was in fact Ms Lee's as her line manager. The stated reason for the suspension was that the claimant had breached confidentiality by sharing part of the contents of her suspension letter with people outside the CCG. In oral evidence, Ms Lee said that it was in reality a combination of many things including attending the LMC meeting and in fact she had considered suspending the claimant earlier in response to her attendance at the LMC meeting.

136. We heard a significant amount of evidence about the suspension including that it was in breach of the probation policy.

137. We find that the respondent was not prevented from suspending the claimant under the probation policy. We also find that the claimant did not breach confidentiality by sending the email to the numerous recipients on 20 May 2021. However, we find that in fact the respondent was concerned about the claimant's sense of propriety and lack of awareness of the role of the CCG and its relationships with its partners.

138. The meeting on 21 May that had been arranged to discuss the claimant's job description was instead turned into a meeting to suspend the claimant without informing her in advance. This was poor practice but we accept the respondent's evidence that the reason for this was that they believed, effectively, that the claimant was unpredictable and that if they told her in advance that she was to be suspended they did not know what she would do that could cause further problems and potential reputational damage for the respondent. We accept the respondent's evidence that there were no other reasonable, less draconian, alternatives to suspension in this case.

139. The allegation arising from this is that at the meeting on 21 May "the claimant was suspended upon an allegation made that she had breached confidentiality without being given clarification of the allegation against her

and was informed by Moira Stephenson that “You are better off resigning then (sic) run the risk of losing this job on misconduct. With such a record, you will never find another job with the NHS”.

140. We find that the claimant was suspended and that the basis for her suspension was not made clear to her. This is not surprising as the stated basis – breach of confidentiality – was not realistically justifiable. However, we think that the respondent genuinely believed that this was the reason based on a mistaken understanding of what could amount to a breach of confidentiality. Their belief that the claimant had acted inappropriately and in a way that could potentially damage the reptation of the CCG or its relationships with external partners that underlay that mislabelling was genuine. The basis for this confusion was unrelated to the claimant’s race.

141. We also find that Ms Stephenson did not say that the claimant was better off resigning than running the risk of losing this job on misconduct. With such record, you will never find a job with the NHS. She did, tell the claimant that if there were a dismissal hearing after the final probation review meeting on 24 May, any dismissal would be for not satisfactorily passing the probationary period rather than misconduct which would be preferable in respect of obtaining future employment.

142. These comments were not in any way connected with the claimant’s race but were reflective of Ms Stephenson’s understanding of the process and were made in an attempt to explain that process to the claimant.

143. Later that day, the claimant’s probationary period was extended by Ms Stephenson. The claimant complains that there is no power under the CCGs probationary or disciplinary policy to suspend an employee during their probationary period. We agree that it is not explicitly provided for. However, given the respondents’ view of the claimant’s conduct and capability at that time, the only realistic alternative to suspension pending completion of the probationary process (and as it turned out the grievance investigation) was dismissal, the claimant not having accrued 2 years’ service. The decision to extend the claimant’s probation and suspend her on full pay was, in our view, a reasonable, if not generous, concession by the CCG in all the circumstances.

144. We recognise that being suspended is of itself extremely stressful but in these particular circumstances the only two options from the respondents’ perspective were extension of the probationary period combined with suspension; or dismissal. The claimant had repeatedly demonstrated that she was unpredictable and presented an ongoing risk of damaging he CCG’s relationships with its partners and it was reasonable for the CCG to want to mitigate against that risk.

145. At 12.40pm on 24 May the claimant submitted a grievance. The grievance included a complaint of race discrimination and the parties agree that it was a protected act. Ms Stephenson had advised the claimant to send it to her and she did so. The claimant was concerned about this because part of her grievance was about Ms Stephenson. In her covering email the claimant wrote: “Please Note: according to the Grievance Policy (2020) "Grievance

issues will be considered confidential. Only those persons who need to know will be given access to relevant information and they in turn, will treat that information as confidential in line with the General Data Protection Act"

146. Ms Stephenson looked at the grievance before forwarding it to Ms Kirkwood. She commented that “the 14 page grievance has landed”. Ms Stephenson did not give an explanation as to why she looked at the grievance and agreed that on reflection it would have been better if she had not. The claimant was expecting her to just pass it on and there really was no good reason for her to look at it. Nonetheless, we have heard nothing to suggest that Ms Stephenson looked at it, or communicated to the claimant that she had looked at it, for any reason related in any way to the claimant’s race.

147. Later, on 24 May, the claimant attended her final probation review meeting with Ms Lee, Ms Davis and Ms Stephenson. The claimant was accompanied by a colleague Mark Williams. We note that Ms Daley, when finding out about the email of 20 May 2021, asked that the claimant be supported to identify someone to accompany her.

148. At the meeting Ms Lee and Ms Davis reviewed the claimant’s objectives with her. The claimant was assessed as having met or making reasonable progress with the specific objectives that had been set. It was confirmed that the claimant had met all deadlines set for her.

149. Then the Key Result Areas as identified in appendix 5 of the respondent’s probation policy were reviewed. This was the first time that the form provided for in Appendix 5 of the policy had been used and the policy provides that it ought to have been used at each of the probationary review meetings. This form sets out key result areas: induction, performance of duties, customer service, integration into department, relationships with co-workers and managers and attendance/time keeping. Although the form had not been used previously, these matters had been addressed, in substance, in previous probationary review meetings.

150. In the final probation review meeting, the claimant was rated as unsatisfactory in a number of areas. It is not necessary to recite them. We find, however, that Ms Lee and Ms Davis genuinely believed, and in our view on a reasonable basis, that the claimant was performing unsatisfactorily in those areas. Although it was the claimant’s case that some of these had been addressed previously, in our view they were cumulative and there was a pattern of the claimant failing to adequately, from the respondents’ perspective, respond to the concerns and guidance of Ms Lee and others.

151. Ms Lee and Ms Davis found that the claimant had failed her probationary period and on 26 May Ms Lee wrote to the claimant stating that she had not met the required standards and she would be convening an end of probation hearing. We find that the reasons for this were that Ms Lee genuinely and reasonably believed that the claimant was failing to achieve in her key result areas, that there was no realistic prosect of the claimant

meeting the standards and that there had been a complete breakdown in the employment relationship between the claimant and the respondents.

152. We heard no evidence to suggest that the decision to fail the claimant's probationary period was in any way connected with her race and we find that the decision was wholly unrelated to the claimant's race.

153. The remainder of the claimant's complaints concern the grievance and dismissal processes.

154. Ms Toni Yel was appointed to investigate and consider the claimant's grievance. She met with the claimant on 27 May 2021, after some preliminary enquiries, to clarify and discuss the claimant's grievance. Ms Yel considered that the matters raised in the claimant's grievance fell into two categories: matters that were apt to be investigated as a grievance, and matters that were more properly considered as mitigation for the end of probation hearing.

155. This was agreed at the meeting and a letter clarifying this was sent to the claimant on 4 June. Four themes were identified, two of which (discrimination in respect of the claimant's allegations of less favourable treatment by Ms Lee and the way the suspension was dealt with) were matters for the grievance and two of which (namely matters relating to the claimant's job description and matters relating to the claimant not being able to discuss those and related concerns with Ms Lee) were considered as relevant to the end of probation meeting.

156. In our judgment this was a sensible and proportionate way to address the lengthy and complex grievance that the claimant had submitted.

157. In the meantime, on 2 and 3 June, Ms Yel conducted investigatory interviews with Ms Lee, Ms Daley, Ms Stephenson, Ms Davis and Ms Heenan and on 4 June 2021 Ms Heenan sent Ms Yel a detailed statement setting out her experiences with the claimant. That statement describes the claimant as having a chaotic working pattern and not understanding the work or key relationships. Ms Heenan said that working with the claimant had made her ill so that, by 17 May 2021, she had told Ms Lee that she could no longer work for the organisation. We take this statement at face value. It is clear that Ms Heenan did not make these assertions lightly and equally clear that she tried unsuccessfully to work with the claimant.

158. As we understand it, the claimant makes two complaints about this. Firstly, that it was wrong to interview witnesses before the claimant had agreed the ambit of the investigation. We find that the ambit was agreed at the meeting on 27 May, the fact that it was confirmed in writing on 4 June does not cause any prejudice to the claimant. The claimant did send amended notes back to Ms Yel on 7 June with comments, but they did not materially alter the scope of the grievance.

159. The second complaint was that Ms Heenan should not have been interviewed as she was not an employee of the CCG. In our view, there is nothing wrong with the decision to interview Ms Heenan. Given the close

working relationship between the claimant and Ms Heenan and the disputes about the claimant's job it would have been surprising had she not been interviewed. We have heard no compelling evidence or submissions suggesting why it was inappropriate to speak to Ms Heenan.

160. The claimant raised a further issue in the course of the investigation and suggested that Emma Shakeshaft had witnessed some of the unfavourable treatment of her. Ms Yel therefore interviewed Ms Shakeshaft on 16 June

161. Having conducted the grievance investigation, Ms Yel arranged to meet the claimant on 17 June 2021 to give her the outcome. In the meantime, on 14 June 2021, the claimant issued her first claim in the Employment Tribunal which, it is agreed, amounted to a protected act in that she brought claims of race discrimination under the Equality Act 2010.

162. Ms Yel explained the grievance outcome in the meeting on 17 June and subsequently sent a letter summarising her findings. The complaints of discrimination were not upheld, but Ms Yel upheld the allegation that the way the suspension was conducted was flawed. However, Ms Yel also found that the decision to suspend was, itself, justifiable.

163. The claimant complains that she ought to have been provided with the grievance outcome 5 days before the meeting with Ms Yel. This is simply a misreading of the grievance policy which provides that the outcome will be communicated in writing within 5 working days. This was a complex grievance which the claimant raise don 24 May. It was concluded by 17 June 2021. In our view and experience this is not excessive. In any event, any delay or failure to adhere to the letter of the policy was as a result of the complexity of the grievance, and not related in any way at all to the claimant's race.

164. The claimant appealed against the grievance outcome on 28 June 2021 and provided detailed grounds on 8 July 2021. It is agreed that this was a protected act.

165. The grievance appeal hearing was held on 17 August 2021 and was chaired by Ms Karen Marshall. It was originally going to be heard on 25 July and chaired by Jason Stamp, a board member. The claimant raise concerns that Mr Stamp was too close to Ms Lee and Ms Heenan so Ms Marshall was appointed instead and a new hearing had to be convened.

166. The panel heard the claimant's appeal. In our view the claimant had an opportunity to fully explain her appeal but it is clear from Ms Marshall's evidence that the claimant found it difficult to be precise. The panel concluded at that stage that it was necessary to refer the grievance back to Ms Yel to obtain further evidence from the other members of the communications team. This was referred to by the parties as referring the grievance back to stage 2, the appeal being stage 3. The claimant had said they had witnessed the discriminatory treatment and she complained that only Ms Shakeshaft had been interviewed. The panel set a timescale of three weeks for the additional investigation and provided that the reconvened appeal hearing would only address the new evidence.

167. The claimant was given an opportunity to provide details of any other people who could provide evidence by noon the next day but she did not do so.

168. The alternatives to adjourning the appeal and sending it back to stage 2 for a limited further investigation were upholding the appeal and sending it back to the beginning of stage 2 to start the whole thing again, or refusing the appeal on the basis of the evidence the panel had. Ms Marshall's evidence, which we accept, was that on the basis of the evidence they had the panel would have dismissed the appeal.

169. Ms Yel interviewed all of the communication team members with the exception of Agnieszka Zychowicz. Ms Zychowicz had by this time left the respondent. The evidence was that none of the other team members had witnessed any adverse treatment of the claimant and they had not been treated adversely, The claimant said that the fact that none of the other team members had been treated adversely was evidence that she was treated differently. However, the claimant said that her mistreatment – and particularly in the meeting on 27 April – would have been obvious to everyone.

170. The claimant was given an opportunity to refer to or provide additional evidence and she did not do so.

171. The hearing was reconvened on 8 September and the claimant was given the opportunity to make further representation about the additional evidence. By the end of the reconvened hearing, therefore, the panel had all the evidence it would ever get and the claimant had had the opportunity to make representations about all the evidence.

172. The claimant's grievance appeal was not upheld and the claimant was informed of this in writing on 9 September 2021. We find that the reason that the grievance appeal was not upheld was because the grievance appeal panel genuinely believed that there was no evidence to substantiate the allegations of discrimination or unfair treatment and that based on all the evidence (which we conclude includes the additional investigation) the grievance investigation was conducted fairly and in accordance with the CCG policy.

173. Following the final outcome of the grievance appeal, on 30 September, the claimant was invited to the hearing to consider the failure of her probationary review.

174. The claimant was also sent the management statement of case on 20 October and the hearing was arranged for 1 November. There is no doubt that there had been a substantial delay in the probation review process from 24 May to 1 November. However, we find that the reason for that delay was because the CCG decided to investigate the claimant's grievance and hear the appeal first, followed by a delay arranging the final hearing because of diary commitments. This was to the claimant's advantage. Had the claimant's allegations of discrimination or unfair treatment generally been upheld, it is entirely possible that this would have cast doubt on the

reliability of Ms Lee's assessment of the claimant and therefore made it less likely that the claimant would be dismissed. We have already addressed the fact that dismissal was the only realistic alternative from the CCG's perspective.

175. The hearing on 1 November 2021 was before Ms Clare Linley, Director of Nursing and Quality with the support of Ms Taylor, HR. The claimant agreed in evidence that she believed that Ms Linley listened to her and conducted a fair hearing. She said that Ms Linley took seriously her concerns that matters about her performance had not been properly raised or recorded prior to her final probation review meeting on 24 May 2021. Ms Linley agreed in oral evidence that the probation policy had not been fully adhered to in the period before 24 May.

176. Despite that, Ms Linley decided to dismiss the claimant and that was notified to the claimant on 4 November 2021. The claimant was paid one month's pay in lieu of notice.

177. The reasons for Ms Linley's decision were that she felt the policy had been complied with overall despite the breaches, but importantly that there had been a significant breakdown in trust and the relationship between the claimant and Ms Lee. This arose from the claimant attending the LMC meeting contrary to Ms Lee's instructions combined with the email sent on 20 May about the claimant's probationary review meeting.

178. The claimant says that Ms Linley refers to this email on 20 May as a breach of confidence rather than a breach of confidentiality. This is a terminological distinction of no consequence. It is clear, and we find, that overall the reason for dismissing the claimant was because the respondent no longer had any trust in her that she would be able to perform her job in the way and to the standard that the respondent required and further that she had failed to comply with a reasonable management instruction.

179. We find that this was the genuine reason for Ms Linley's decision to dismiss the claimant.

180. We also prefer Ms Linley's evidence and find that she was not, at the time she dismissed the claimant, aware that the claimant had made any complaints of race discrimination whether in her grievance, her grievance appeal or the Employment Tribunal claim.

181. The claimant appealed against her dismissal on 10 November 2021. The claimant no longer relies on this as a protected act. The basis of the claimant's appeal was that the disciplinary panel had, effectively, ignored evidence that was in the claimant's favour, made inaccurate or wrong findings and added a new ground of appeal of their own volition – namely breach of confidence.

182. The appeal hearing took place on 17 December 2021. It was delayed slightly because of the unavailability of the panel members. The panel comprised of Alex Seale, who was at the time Chief Operating Officer for North Lincolnshire CCG, Erika Stoddart, a lay member for North

Lincolnshire CCG and Ms Karen Ellis Deputy Director of Commissioning at Hull CCG. The panel ought to have comprised only members from Hull CCG but there were no sufficiently senior managers or any board members at Hull CCG who were sufficiently uninvolved in the case to date to hear the appeal.

183. The claimant attended the appeal but in reality took little part in it. She said that she did not agree with the case management notes and that she was astonished with the level of false information. Ms Linley presented the management case and at the end the claimant just asked if the panel had had a chance to read all the evidence submitted and the panel confirmed that they had.

184. The panel dismissed the claimant's appeal. The letter records, and we find, that the reason for this was that the claimant had not produced any new evidence and had indicated that she did not wish to say anything at the appeal.

185. It is the claimant's case that the decision of the appeal panel not to uphold the claimant's appeal was so unreasonable that they can only have made the decision because of one of the protected acts. The claimant also says that the panel failed to consider her appeal properly.

186. We find that the reason that the appeal panel did not uphold the claimant's appeal was for the reasons set out in their letter. We have seen no evidence to suggest that the panel did not consider the appeal properly. Conversely, it appears that the claimant did not engage in the appeal. In those circumstances, rather than the decision not to uphold the claimant's appeal being so surprising that it requires explanation, it is wholly unsurprising that the claimant's appeal was dismissed.

187. Additionally, we find that none of the members of the appeal panel were aware that the claimant's grievance, grievance appeal or Employment Tribunal claim included complaints of race discrimination. This was the clear evidence of Ms Seale and there is no other evidence to suggest the contrary.

Law and conclusions

Basis of claim

188. The claimant brings claims under s 39 and s 40 Equality Act 2010. Section 39 provides that

> (1) An employer (A) must not discriminate against a person (B)—
>
> (*a*) in the arrangements A makes for deciding to whom to offer employment;
>
> (*b*) as to the terms on which A offers B employment;
>
> (*c*) by not offering B employment.

(2) An employer (A) must not discriminate against an employee of A's (B)—

(*a*) as to B's terms of employment;

(*b*) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(*c*) by dismissing B;

(*d*) by subjecting B to any other detriment

…

(4) An employer (A) must not victimise an employee of A's (B)—

(a) as to B's terms of employment;

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

189. Section 40 says

(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A's;

(b) who has applied to A for employment.

190. Section 212 Equality Act 2010 provides that detriment does not include an act that amounts to harassment unless the Equality Act 2010 disapplies the provisions on harassment in the particular case. This means that if an act is both harassment and a detriment for the purposes of direct discrimination or victimisation only the claim for harassment will succeed.

191. In *MOD v Jeremiah* [1979] IRLR 436 the court of appeal held that a detriment exists if a reasonable worker would take the view that the treatment was to his detriment. In many cases it is obvious. In *Shamoon v Chief Constable of the RUC* [2003] IRLR 285, Lord Nicholls said : “while an unjustified sense of grievance about an allegedly discriminatory decision cannot constitute 'detriment', a justified and reasonable sense of grievance about the decision may well do so”. There is therefore an element of objectivity to this test.

192. In the course of considering this judgment, we realised that there might be a legal issue in respect of whether the claimant could, by virtue of section 39(1) of the Equality Act 2010, bring a claim of detriment in relation to her pre employment allegation relating to the conversation on 21 January 2021. This was not, however, raised by the parties and in light of our findings of fact and the provisions of s 212, it is not necessary to decide that point.

Direct race discrimination

193. Section 13 of the Equality Act 2010 provides:

> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

194. By virtue of section 9 of the Equality Act 2010, race is a protected characteristic and includes nationality and ethnic or national origins. The claimant identifies as Romanian and the claim is based on her being Romanian and/or Eastern European

195. Section 23 (1) provides

> (1) On a comparison of cases for the purposes of section 13, 14, or 19 there must be no material difference between the circumstances relating to each case.

196. We were referred to the case of *Shamoon v Chief Constable of the RUC* [2003] IRLR 285 which provides, at para 110,

> "In summary, the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class".

197. In identifying the comparator is it usually important to have regard to the unfavourable treatment complained of and the reason for it to establish to what extent the circumstances are not materially different. Additionally, in our view, if the treatment complained of does not amount to a detriment under s 39, it is not necessary to consider the detail of a comparator at all

198. Section 136 provides

> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

199. We were referred to *Royal Mail Group Ltd v Efobi* [2019] EWCA Civ 18

> "First, the burden is on the employee to establish facts from which a tribunal could conclude on the balance of probabilities, absent any explanation, that the alleged discrimination had occurred. At that stage the tribunal must leave out of account the employer's explanation for the treatment. If that burden is discharged, the onus shifts to the employer to give an explanation for the alleged discriminatory treatment and to satisfy the tribunal that it was not tainted by a relevant proscribed characteristic. If he does not discharge that burden, the tribunal must find the case proved."

200. Where the acts are not inherently discriminatory, but are alleged to have a discriminatory motivation, the claimant must establish facts from which we conclude that there was such discriminatory motivation. (*Nagarajan v London Transport Exec* [1999] IRLR 572).

201. In considering whether the claimant has proved such facts, we can take account of all the evidence we have heard.

202. In *Madarassy v Nomura International* [2007] IRLR 246, the court of appeal said that the burden of proof does not shift to the employer simply on the claimant establishing a difference in status (in this case, race) and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, <u>without more,</u> sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.

203. This means that there must be something more than just unfavourable treatment and a difference in status. The treatment must also be unfavourable. It must be detrimental to the claimant in that the claimant must feel they have been subject to a disadvantage, but it is also necessary that a reasonable worker would or might share that view. It is not sufficient that the claimant has an unjustified sense of grievance.

204. It is also not sufficient for the claimant to show she has been treated favourably, but not as favourably as she would like (Williams v The Trustees of Swansea University Pension & Assurance Scheme and another [2018] UKSC 65). There must be actual unfavourable treatment.

205. Further, in considering less favourable treatment, in *The Law Society v Bahl* [2003] IRLR 640, Elias J said

> "the tribunal would need to have very cogent evidence before inferring that someone who has acted in a reasonable way is guilty of unlawful discrimination".

Harassment

206. S 26 Equality Act 2010 says, as far as is relevant,

> (1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

207. Race is a relevant protected characteristic.

208. There are a number of elements to this provision (*Richmond Pharmacology v Dhaliwal* [2009] IRLR 336)

(1) The unwanted conduct. Did the respondent engage in unwanted conduct? This is a subjective test – was it actually unwanted

(2) The purpose or effect of that conduct: Did the conduct in question either:

(a) have the purpose *or*

(b) have the effect

of either

(i) violating the claimant's dignity or

(ii) creating an adverse environment for her? (We will refer to (i) and (ii) as 'the proscribed consequences'.)

(3) The grounds for the conduct. Was that conduct on the grounds of the claimant's race (or ethnic or national origins)?

209. If the conduct had the effect of violating the claimant's conduct or creating an adverse environment, was it reasonable for the claimant to have felt that way. We were referred to *Pemberton v Inwood* [2018] ICR 1291 in which Underwood LJ said

"In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was

reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so."

210. The EAT have cautioned (see, for example, *Richmond Pharmacology*) against encouraging a culture of hypersensitivity which could have the effect of undermining the important purpose of the law of harassment. It will also be necessary to consider the purpose of the comments or actions to determine the context. This requires the tribunal to consider the surrounding circumstances and take a view on the nature of the relationship between the alleged perpetrator of the harassment and their alleged victim.

211. In respect of whether the conduct was on the grounds of a protected characteristic, the causal link required by "related to" is a less strict test than for direct discrimination and whether conduct is related to race is a question for the Tribunal to determine on the facts before it. It is not sufficient that the relevant protected characteristic is part of the background context.

212. We consider the 18 allegations of direct discrimination and harassment.

213. It is not proportionate to set them out again in detail. We have made detailed findings of fact about them. We will address them by date and as numbered in the appendix, albeit that they are no longer in chronological order.

214. Allegation 1 (21 January 2021). This did not amount to a detriment for the purposes of direct discrimination. In any event, we have found that even if this was because of the claimant's race – and we acknowledge that the presence of a strong accent could be said to be inherently linked to a person's race – the claimant was not treated less favourably than a non-Romanian or non-Eastern European person would be. The relevant comparator is someone with an unfamiliar accent and we have found that the same treatment was, and would be applied to a person with a strong regional British accent. The claimant was not treated less favourably than a British person would be. This claim for direct discrimination therefore fails for these reasons and it is not necessary to consider the effect of s 39 (1) Equality Act 2010.

215. In respect of harassment, the comment was related to the claimant's race. That is obvious. However, in our view the evidence does not support that the comments actually did cause the claimant to feel harassed or experience any of the proscribed consequences and, even if they did, it was not in all the circumstances reasonable for it to do so. As we have found, it

was an inoffensive comment intended to welcome the claimant to the team. For these reasons, this claim of harassment is unsuccessful.

216. Allegation 2 (17 February salary).

217. We have found that the respondents properly followed the CCG policy in respect of setting the claimant's salary. This was wholly unrelated to the claimant's race in any way at all. It was also not detrimental treatment by any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

218. Allegation 3 (Now 10 March EQIA issue)

219. We have found that Ms Lee acted properly and reasonably in respect of this allegation. This was wholly unrelated to the claimant's race in any way at all. It comes nowhere near producing the proscribed consequences required to meet the test for harassment and being required to comply with a manager's reasonable instructions about the nature of the claimant's role cannot reasonably be considered detrimental. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

220. Allegation 4 (9 March – Doctor on email).

221. We have found that Ms Lee acted reasonably in respect of this allegation and for genuine reasons. This was wholly unrelated to the claimant's race in any way at all. It was also not detrimental treatment by any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

222. Allegation 5 (now 22 March – taking notes)

223. We have found that the claimant was asked to take notes of the EDI Steering Group meeting as it was part of her job to do so. The request was not made at unreasonably short notice and in any event the claimant was offered support in taking and producing the noes. This was wholly unrelated to the claimant's race in any way at all. It was also not detrimental treatment by any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

224. Allegation 6 (now 4 May – saying meetings in plan before claimant started in role)

225. We have found that this was a wholly reasonable comment in the context and Ms Lee had a genuine reason for making it. This was unrelated to the claimant's race in any way at all. It was also not detrimental treatment by

any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

226. Allegation 7 (27 April – Comment/"joke" about vaccine take up amongst Eastern Europeans).

227. We have found that this did not happen as the claimant alleges. It was a reasonable discussion in the context of the claimant's job in the communications team. In respect of harassment, it was related to the claimant's race. However, as we have found it happened it could not reasonably have been perceived as creating an offensive, degrading or humiliating environment for the claimant. We also find that, while the claimant was asked about this because of her nationality and a non-eastern European would not have been, it does not on the basis of the facts we have found on any reasonable basis amount to a detriment or less favourable treatment.

228. For these reasons, the allegation is unsuccessful as a claim of direct discrimination or harassment.

229. Allegation 8 (28 April – unproductive work and unwanted comments)

230. We have found that the claimant was not given unproductive work to do. Ms Lee was reasonably asking the claimant to let her know what she was doing in order to supervise her and to protect her time.

231. We have found that Ms Lee did not make the comments the claimant alleges or in the way the claimant says. The comments that we have found were reasonable and appropriate for a manager to make to their employee.

232. These incidents as we have found them were unrelated to the claimant's race in any way at all. They were also not detrimental treatment by any reasonable standards and they come nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

233. Allegation 9 (28 April – comments about autonomy)

234. We have found that Ms Lee did not make the comments as alleged or in a demeaning way. Ms Lee's comments in the meeting were reasonable and appropriate in the circumstances. They were wholly unrelated to the claimant's race in any way at all. They were not detrimental treatment by any reasonable standards and they came nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

235. Allegation 10 (6 and 13 May – ignoring request to not work unsocial hours and not being paid for hours worked).

236. We have found that the claimant did not request to work additional or unsocial hours, but that she decided to do so for her own convenience. She was not paid for them, but that was because she had no identifiable right to be paid for them (which we will address in more detail in respect of the breach of contract claim below). The claimant was allowed time off in lieu or flexi time as recompense in accordance with the respondent's policy. The incident as we have found was wholly unrelated to the claimant's race in any way at all. It was also not detrimental treatment by any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

237. Allegation 11 (12 May – transgender discussion issue)

238. This did not happen as the claimant alleged. Rather than being excluded from the discussion on transgender patient issues, the claimant was required to be part of the event to explore them. This allegation is dismissed as a claim of harassment and direct discrimination.

239. Allegation 12 (13 May – comments about administrative level job and issues about cancelling and requiring approval for meetings)

240. In our judgment, Ms Lee acted entirely reasonably and appropriately in the meeting on 13 May. Ms Lee had a clear and reasonable reason for refusing the claimant's attendance at the LMC meeting. She did not cancel any other meetings, she merely sought clarity about the claimant's attendance for the claimant. Ms Lee was continuing to try to explain the claimant's priorities in the role. She did not make negative or derogatory comments about the nature or status of the claimant's role. All that happened in the meeting was unrelated to the claimant's race in any way at all. It was also not detrimental treatment by any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

241. Allegation 13 (16 -18 May Erica Daley ignoring complaints)

242. We have found that this did not happen. Ms Daley responded wholly appropriately in the circumstances. In any event this was wholly unrelated to the claimant's race in any way at all. It was also not detrimental treatment by any reasonable standards and it comes nowhere near producing the proscribed consequences required to meet the test for harassment. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

243. Allegation 14 (17 May – berating the claimant and reference to fast track probation)

244. We have found that the claimant was not berated at this meeting, but there was a long and detailed discussion about the claimant's attendance at the LMC meeting in which the claimant was reluctant to accept she had done anything wrong. There was no reference by Ms Lee or Ms Stephenson to fast track probation. We accept that the content of this meeting was unwanted by the claimant. Being admonished, even gently, could well amount to a detriment and could create a humiliating or offensive environment. However, in our judgment this was wholly unrelated to the claimant's race in any way at all. The entire context was the claimant's deliberate decision to attend the LMC meeting contrary to Ms Lee's clear instructions and Ms Lee's genuine ongoing concerns about the claimant's ability to properly do her job. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

245. Allegation 15 (suspension and Ms Stephenson's comments about resigning).

246. In our view the respondent's stated reason for suspension – namely breach of confidentiality – was unsustainable. There was no identifiable meaningful breach of confidentiality. The confidentiality attached to the letter was for the claimant's benefit and, in our view, it is a matter for her if she wishes to tell people about the probation review meeting. The allegation was not adequately clarified to the claimant and in our judgment this is because it does not make sense.

247. However, we have found that the respondent's real reason for suspending the claimant was because they just did not trust her to conduct herself with an appropriate level of professionalism and propriety. The claimant's decision to send the widely distributed email to the senior people in different organisations on 27 April 2021 was very clearly not the sort of conduct the CCG would expect from someone in the claimant's position. It reflected the same lack of appreciation for the role and position of the CCG as the distribution of the LMC report did.

248. Suspending the claimant was a detriment by any reasonable standards and is likely to have created a hostile or offensive environment for the claimant. However, the decision to suspend the claimant was wholly unrelated to her race and solely because of her conduct.

249. We have found that Ms Stephenson did not make the comments as alleged. She was merely seeking to explain the difference between the claimant being dismissed for not passing her probation and being dismissed for misconduct. This was, in any event, wholly unrelated to the claimant's race and solely because of the perilous position the claimant had put herself in by her conduct.

250. For these reasons, this allegation is dismissed as a claim of harassment and a claim of direct discrimination.

251. Allegation 16 (24 May failing probation period)

252. We have found that the claimant failed her probationary period because Ms Lee and Ms Davis genuinely and reasonably believed that the claimant was failing to perform satisfactorily in a number of areas and they believed that the claimant would not respond to guidance to improve her performance.

253. Although failing the probation period was undoubtedly a detriment and is likely to have created an offensive environment for the claimant, it was wholly unrelated to the claimant's race in any way at all. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

254. Allegation 17 (Ms Stephenson telling the claimant that she had looked at her grievance briefly).

255. This did happen. Ms Stephenson has been unable to provide a satisfactory explanation for doing so and recognised that perhaps on reflection she ought not to have done. Given that Ms Stephenson was from the claimant's perspective closely bound up in the matters about which she was complaining this created an impression that the grievance process would not be fair. This was detrimental to the claimant and is likely to have reasonably caused, in the entire context of the time, a hostile or offensive environment for the claimant.

256. However, considering *Maderassay* and s 123 Equality Act 2010, we have heard no evidence and found no facts from which we could conclude that this was in any way because of or related to the claimant's race. We have considered carefully the allegations of 21 January 2021 and 27 April 2021 – the two allegations that <u>are</u> connected with the claimant's nationality. However, on the basis of the facts we have found – particularly considering that those allegations related to Ms Lee and not Ms Stephenson – they are not sufficient to reverse the burden of proof in respect of either harassment or direct discrimination.

257. For these reasons, this allegation fails as a claim for both harassment and direct discrimination in that the actions of Ms Stephenson are wholly unconnected with the claimant's race.

258. Allegation 18 (ongoing delay and procedural flaws with grievance and suspension)

259. In our judgment, there were no significant procedural flaws in the grievance process. We have addressed the specific allegations in Mr Patel's submissions. It was not procedurally incorrect or unfair to conduct the interviews in the grievance before finalising in writing the themes and, in any event, the grievance investigation continued and expanded on the

provision of further information by the claimant so there was no prejudice to her. It was wholly appropriate to interview Ms Heenan. The claimant was not entitled to receive the grievance outcome in writing before the outcome meeting. It was perfectly proper to send the grievance back for further investigation at the appeal and it was similarly proper and proportionate to limit the scope of the second appeal hearing,

260. The delay arising from the appeal adjournment was minimal and proportionate

261. In respect of the suspension, this was a proportionate and reasonable approach. The alternative was dismissal. That is obvious. It is simply not credible to suggest that in the particular circumstances the claimant should have instead been confirmed as permanent.

262. The decision to investigate the claimant's grievance before considering her dismissal was wholly reasonable and, for the reasons explained, in the claimant's interests.

263. While we accept that the fact of the suspension and the time taken to complete the whole process was undoubtedly stressful – possibly even distressing – for the claimant, in our view the whole process was conducted reasonably and in a reasonable time scale given all the circumstances.

264. The alternative was dismissal on or soon after 24 May. To this extent the delay (during which the claimant remained on full pay) was not, objectively, detrimental.

265. It is possible that the delay and the claimant's perception of how the grievance and suspension were conducted created a hostile or offensive environment.

266. However all of this was wholly unrelated to the claimant's race in any way at all. In our view, the respondent conducted these processes genuinely and in good faith. This allegation is dismissed as a claim of harassment and a claim of direct discrimination.

267. For these reasons the claimant's claims of harassment and direct discrimination are dismissed.

268. We address briefly the reversal of the burden of proof. This has been referred to in respect specifically of allegation 17 and we address it also in respect of its general application to this case. The claimant was very clear that she felt or perceived that she had been discriminated against. Mr Bayne acknowledged on behalf of the respondents that this was a genuine belief of the claimant. We cannot comment on how the claimant feels or why she perceives things in a certain way. We have not lived the claimant's life and do not know her experiences. Our job, however, is to consider the evidence that we have and determine the claim in accordance with that

evidence and the law as we understand it. Whatever the claimant's perceptions are, unless they are supported by some evidence, we cannot rely on them as evidence of discrimination.

269. We set out our findings and decision in detail. Beyond the specific findings we have made, we have heard no evidence from which we could conclude, in the absence of an alternative explanation, that any of the acts relied on by the claimant as either harassment of direct discrimination were related to or because of the claimant's race

Victimisation

270. S 27 Equality Act provides

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

271. We do not need to address detail the law relating to protected acts. The grievance, grievance appeal and first Employment Tribunal claim dated 14 June 2021 are agreed to be protected acts.

272. In respect of the causal link between any protected act and any detriment, it is the "reason why" the act was done that we must consider. It is not sufficient to say "but for" the protected act there would have been no detriment, the protected act must be the reason or a significant influence on the decision to do the act that is relied on as a detriment.

273. We also observe that the same principles in respect of the reversal of burden of proof (s 136 Equality Act 2010) apply as they do for direct discrimination and harassment. If we find facts from which we could conclude, in the absence of an explanation, that the reason for the detrimental act was because of the protected act then the burden shifts to the respondent to show that the detrimental act was in no way because of a protected act. However, again, it is not sufficient simply to prove the

existence of a protected act and a subsequent detriment to reverse the burden of proof. There must be something additional to make then link. In this case, the claimant put her case on the basis that the detriments were so unlikely to have arisen for a legitimate reasons that we must infer that the actual reason was because the claimant did a protected act.

274. We have no objection to this concept in principle, but for reasons that are set out in this judgment, the facts as found simply do not support the claimant's case in this way.

275. The alleged detriment cannot be found to be because of a protected act if the decision maker did not know of the protected act (*Peninsula Business Services Ltd v Baker* 2017 ICR 714 EAT).

276. In *A v Chief Constanble of West Midlands Police* [2015] EAT0313/14 Langstaff J said

> "…where the protected act is a complaint, to suggest that the detriment is not to apply a complaints procedure properly because a complaint has been made, it might be thought, asks a lot and is highly unlikely. The complaints procedure itself is plainly embarked on because there has been a complaint: to then argue that where it has not been embarked on with sufficient care, enthusiasm or speed those defects are also because of the complaint itself would require the more careful of evidential bases."

277. We address the allegations of victimisation.

278. Detriment 1. Delay dealing with the claimant's grievance appeal?

279. This related to adjourning the appeal for further investigation. The claimant's argument was that the decision to delay was so unreasonable the only possible explanation is that it was because the claimant made an allegation of race discrimination in her grievance, her grievance appeal or her ET1.

280. We have already explained the reasons for the adjournment and our view that it was reasonable,. There is simply no evidence whatsoever to link this act in the way required under s 27 to the claiman's protected acts. This allegation of victimisation is unsuccessful and dismissed.

281. Detriment 2 Fail to uphold the claimant's grievance appeal on 14 September 2021, following grievance appeal hearings on 17 August and 8 September 2021?

282. We have found that the reason the grievance appeal panel did not uphold the claimant's grievance appeal was because they reasonably considered on the basis of the evidence they had that there was no basis to substantiate the allegations of discrimination or unfair treatment. We refer to *A v CC West Midlands*. There needs to be something significant to succeed in a claim such as this and there is not. In fact, there is no evidence at all to show that the decision not to uphold the claimant's grievance appeal was because of her protected acts.

283. It is certainly not the case that the decision was so surprising that it called for an explanation and that the only possible explanation was that it was because of the protected acts.

284. This claim is unsuccessful and is dismissed

285. Detriment 3 On 1 November 2021 invite the claimant to a reconvened/reopened dismissal hearing, purportedly under the Induction and Probationary Process, 5 months after the final probation review meeting on 24 May 2021?

286. We conclude that the claimant's complaint about this is the length of the delay. With respect, the claimant's claim of detriment is not realistically sustainable in light of the alternative being earlier dismissal as already explained in respect of the discrimination and harassment claims above.

287. Nonetheless, we have found that the reason for the delay was to conclude the grievance process and this was a reasonable and proper approach. Neither the decision to conclude the grievance before proceeding to the final hearing, nor the decision to proceed to the final hearing itself were because, in the sense required by s 27 Equality Act 2010, of any protected acts the claimant did.

288. This claim is unsuccessful and is dismissed

289. Detriment 4 Decide to progress the investigation purportedly under the Induction and Probationary Process following the final probation review?

290. This allegation is unclear. In oral evidence the claimant said that, in effect the detriment was the delay – not having the final probation meeting within 2 months. We have already addressed this and the reasons for the delay and Mr Patel also addressed it together with the preceding allegation. This allegation is also for the same reasons as the previous allegation dismissed.

291. Detriment 5 Dismiss the claimant on 4 November 2021?

292. We have set out the reasons for the claimant's dismissal and do not repeat them. It was not because of any of the claimants; protected acts. In any event, however, we have found that Ms Linley was unaware that the claimant had raised any complaints of discrimination so that this claim is bound to fail in accordance with *Baker.*

293. Detriment 6 Fail to consider properly the claimant's appeal against her dismissal submitted on 10 November 2021?

294. Detriment 7 Fail to uphold the claimant's appeal against her dismissal submitted on 10 November 2021?

295. We consider these final two matter together. Firstly the appeal panel were unaware that the claimant had made complaints of race discrimination. These allegations must fail for this reasons (see again *Baker*). However, in our judgment the appeal was considered properly and the claimant was

given opportunity to participate fully. She decided not to. In those circumstances, as set out previously, it is unsurprising that the claimant's appeal was unsuccessful and there is certainly no basis on which we could conclude that it was because the claimant had done any protected acts.

296. For these reasons the claimant's claims of victimisation are dismissed.

297. We have not addressed the time points in respect of the discrimination and victimisation claims as it is not proportionate to do so in light of our findings and decision.

Breach of contract

298. The final claim is that the respondent was in breach of contract for failing to pay the claimant in respect of 4 unsocial hours worked on 29 April and 6 May 2021.

299. The first question is what contractual term is the respondent said to be in breach of. Mr Patel refers to the definition of unsocial hours in the starting salary and reckonable policy. In our judgment, this is unlikely in the context to be directly relevant.

300. However, our findings are that, on the balance of probabilities the claimant would not be entitled to any additional payments (overtime, unsocial hours or anything else) unless the additional hours were agreed by the respondent and they were not, in this case, agreed. Even, therefore, taking the claimant's case at its highest and doing the best we can there is no existing contractual basis for the claimant's claim that she was entitled to be paid more than she already has been for those four hours work.

301. In any event, the amendment application to include the breach of contract in the second claim was made on 25 April 2022. The claimant's employment ended on 4 November 2021. Early conciliation ran from 7 January 2022 to 17 February 2022. The application and consequently the claim was not made within the 3 month time limit under article 7 of the Employment Tribunals Extension of Jurisdiction Order 1994. A claim for breach of contract must be made within three months of the effective date of termination, subject to any time taken for early conciliation which is not relevant at this point. The amendment decision is not determinative of the time point (see *Galilee v Commissioner of Police of the Metropolis* [2018] I.C.R. 634). The test for extending the time in this case is whether it was reasonably practicable to bring the clam in time and, if not, whether it was brought within a reasonable period.

302. The claim was wrongly included in the first claim. There is little prejudice to the respondent in the delay. However, that is not the test. We have heard no explanation as to why the claim was not included in the second claim or why the application was delayed. In our view, it was reasonably practicable for the claim to be included in the second claim and for these reasons the claim is out of time and the tribunal does not have jurisdiction to hear it.

303. For these reasons the claimant's claims are unsuccessful and are dismissed.

Costs

304. The respondents made an application for a portion of their costs on two bases.

305. Firstly, that from the Friday of the first week of the hearing, when the claimant's evidence and Ms Lee's evidence had completed, the claimant's case had no reasonable prospects of success, and that was, or should have been, obvious to the claimant who was represented by a barrister.

306. Secondly, in the alternative that the claimant acted unreasonably in declining to withdraw her case on the receipt of a number of cost warnings from the respondent. The respondent made a total of three cost warnings, one in writing after the exchange of witness statements, one orally on the first Friday after the conclusion of Miss Lee's evidence and a final warning confirming the oral warning in writing during the second week.

307. The respondent claims only the costs of the second week of the hearing totalling £8995 comprising £6000 counsel fees and £2995 solicitors fees albeit that they submit that the claim was in fact obviously without any reasonable prosects of success from the exchange of witness statements. This is, in our judgment, a restrained and moderate application by the respondents.

308. The powers of the Tribunal in respect of costs order are set out in rules 74 – 78 and 84 of the Employment Tribunals Rules of Procedure 2013.

309. The test for us in considering a costs application is in Rule 76. We may, as far as is relevant to this application, make an award of costs where the paying party has acted vexatiously, abusively, disruptively or otherwise unreasonably in either bringing the proceedings or the way the proceedings had been conducted; or if the claim has no reasonable prospect of success.

310. In our view the claimant has acted unreasonably in continuing to pursue her claim after the conclusion of her evidence and Miss Lee's evidence and having received cost warnings from the respondent. We have to assume that the claimant was in receipt of reasonable advice from Mr Patel when she received the costs warnings and it was her decision to continue the case in those circumstances when the poor prospects for her claims were obvious.

311. We note particularly that in the course of the claimant giving evidence she was asked specifically by the Tribunal the basis on which her claims were said to be related to race and in the course of that question the test for establishing discrimination as explained above was set out explicitly. This was early in the claimant's evidence and despite that the claimant has still failed to explain, except for her own wholly subjective feelings and

perceptions, how the allegations in her claims related to her race. It is not that the claimant's evidence about a credible basis for concluding that her alleged treatment was because of or related to her race was rejected. The claimant was unable to articulate an objective basis for concluding that her alleged treatment was because of, or related to, her race at all.

312. This absence of any clear basis on which the claimant put her claims of discrimination was then reflected in the way that Mr Patel put questions to the respondent's witnesses. It is fair to say that Mr Patel did as good a job as he could in the circumstances but he had no concrete evidence on which to base his assertions in his questions to the respondent's witnesses that the claimant's claims were based on race or acts of victimisation. We conclude from this that Mr Patel was perfectly well aware of the difficulties that the claimant's claim faced and that he must have advised the claimant of this.

313. For those reasons we found that the claimant did act unreasonably in continuing to pursue her claim after the first week and that from the conclusion of her evidence, and if not the certainly form the conclusion of Ms Lee's evidence, it was obvious that the claimant's claims had no reasonable prospects of success.

314. In deciding whether to make a costs order and, if so what amount, we are entitled to have regard to the claimant's ability to pay. The claimant is in a well-paid job albeit that it is not necessarily secure as it appears to be for a fixed term until June 2023. However, for the time being the claimant has a substantial income in excess of £50,000 per year (equivalent) and her husband also works. The claimant also has a substantial amount of capital from the sale of her house which is greater than the amount claimed by the respondents.

315. In all the circumstances therefore we allow the respondents' costs application and we award the respondent their costs of £8995. The claimant requested 28 days to make payment and we allow that application.

1803196/2021
1801111/2022

Employment Judge **Miller**

20 March 2023

REASONS SENT TO THE PARTIES ON

22 March 2023

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FOR THE TRIBUNAL OFFICE

Appendix 1 – list of issues

1. Time limits

1.1 Given the respective dates the claim forms were presented and the dates of early conciliation, certain of the claimant's complaints under the Equality Act 2010 may not have been brought in time.

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

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Jurisdiction

2.1 Given that the claimant's contract claim was included in the First Claim, which was presented to the Tribunal before the termination of her employment (and was not included not in the Second Claim), does the Tribunal have jurisdiction to consider that claim?

3. Equality Act claims

3.1 The claimant relies upon her Romanian nationality and/or her Eastern European ethnic origin.

4. Direct race discrimination (Equality Act 2010 section 13)

4.1 Did the respondent do any of the things referred to in Appendix 2?

4.2 Was that less favourable treatment?

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.

The claimant says she was treated worse than Mr Colin Hurst. If he is not an appropriate actual comparator and/or there was nobody else in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

4.3 If so, was it because of race?

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

5. Harassment related to race (Equality Act 2010 section 26)

5.1 Did the respondent do any of the things referred to in Appendix 2?

5.2 If so, was that unwanted conduct?

5.3 Did it relate to race?

5.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

6. Victimisation (Equality Act 2010 section 27)

6.1 Did the claimant do a protected act as follows:

6.1.1 The grievance submitted on 24 May 2021?

6.1.2 The Tribunal proceedings in the First Claim presented on 14 June 2021?

6.1.3 The grievance appeal (which the claimant states was submitted on 7 July 2021 but that date is not agreed by the respondent)?

6.1.4 The dismissal appeal submitted on 10 November 2021?

6.2 Did the respondent do the following things:

6.2.1 Delay dealing with the claimant's grievance appeal?

6.2.2 Fail to uphold the claimant's grievance appeal on 14 September 2021, following grievance appeal hearings on 17 August and 8 September 2021?

6.2.3 On 1 November 2021 invite the claimant to a reconvened/reopened dismissal hearing, purportedly under the Induction and Probationary Process, 5 months after the final probation review meeting on 24 May 2021?

6.2.4 Decide to progress the investigation purportedly under the Induction and Probationary Process following the final probation review?

6.2.5 Dismiss the claimant on 4 November 2021?

6.2.6 Fail to consider properly the claimant's appeal against her dismissal submitted on 10 November 2021?

6.2.7 Fail to uphold the claimant's appeal against her dismissal submitted on 10 November 2021?

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

6.4 If so, was it because the claimant did a protected act?

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

7. Remedy for discrimination or victimisation

7.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

7.2 What financial losses has the discrimination caused the claimant?

7.3 Has the claimant taken reasonable steps to replace her lost earnings, for example by looking for another job?

7.4 If not, for what period of loss should the claimant be compensated?

7.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

7.6 Has the discrimination caused the claimant personal injury or exacerbated any pre-existing personal injury and, if so, how much compensation should be awarded for that?

7.7 Has any behaviour of the respondent aggravated injury caused to the claimant to the extent that an award of aggravated damages (over and above any award for injury to feelings) is appropriate and, if so, how much compensation should be awarded for that?

7.8 Is any behaviour of the respondent to be categorised as being wrongdoing that was conscious and contumelious such that an award of exemplary damages is appropriate and, if so, how much should be awarded for that?

7.9 Has the claimant suffered any consequential financial loss for which she should be compensated over and above the above awards and, if so, how much compensation should be awarded for that?

7.10 Is there a chance that the claimant's employment would have ended in any event? Should her compensation be reduced as a result?

7.11 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

7.12 Did the respondent or the claimant unreasonably fail to comply with it?

7.13 If so is it just and equitable to increase or decrease any award payable to the claimant, and by what proportion, up to 25%?

7.14 Should interest be awarded and, if so, much?

8. Breach of Contract

8.1 Did the claimant's claim for not having been paid in respect of four 'unsocial hours' that she worked on 6 and 13 May 2021 arise or was it outstanding when the claimant's employment ended?

8.2 Did the claimant work those four 'unsocial hours' on 6 and 13 May 2021?

8.3 If so, was she entitled to be paid in respect of those hours?

8.4 If so, did the respondent pay her the wage due?

8.5 If not, was that a breach of contract?

8.6 If so, how much should the claimant be awarded as damages?

Appendix 2 – list of allegations

1. On or about 21 January 2021, Susan Lee stating to the claimant on a phone call that “I noticed you have an accent”, asking the claimant where she was from and commenting “it seems we attract Eastern Europeans”.

2. On or about 17 February 2021, the claimant’s salary for her role being set at £31,365 per annum which was at the bottom of the relevant band, without consultation or explanation by Susan Lee and conveyed by Zoe McFadden.

3. On or about 2 March 2021, in the meeting with Amanda Heenan, Susan Lee excluding the claimant from reviewing the Eq Act 2010 in her role as EDI Manager and being informed that “Amanda is to review the EqIAs… she is the expert.”

4. On or about 9 March 2021, Susan Lee asking that claimant to stop using her Dr title on her email signature.

5. On or about 24 March 2021, Susan Lee requiring the claimant at short notice to be a notetaker in meetings they attended going forwards starting with the EDI Steering Group meeting.

6. On or about 20 April 2021, Susan Lee denigrating the claimant at a Tuesday morning meeting when they were both praised by stating “This was in plan before Georgiana being in post” thus humiliating the claimant and undermining her work.

7. On or about 27 April 2021, Susan Lee made a joke at a staff meeting about Eastern Europeans in the context of encouraging the take up of COVID Vaccines referring to the claimant and saying “perhaps we could learn more from Agnieszka and Georgiana how to get the eastern Europeans”.

8. On or about 28 April 2021, Susan Lee giving the claimant unproductive additional work to undermine her, in particular by requiring the claimant to submit a weekly tasks report every Monday going forwards, Susan Lee commenting to the claimant “I am not trying to treat you any differently” and “that should keep you busy” when the claimant was busy performing her role and fulfilling expectations of her.

9. On or about 28 April 2021, the claimant informed Susan Lee that she would like more autonomy in her role to which Ms Lee responded “you come to me speaking about autonomy, there is no autonomy in this role”; “I as your line manager decide what your role is.”

10. On 6 and 13 May 2021, the claimant requested not having to work unsocial hours for childcare commitments to Susan Lee, this was ignored and the claimant was forced to work these hours and was never paid this, which amounted to four hours pay.

11. On 12 May 2021, the claimant attended an online EDI Steering Group Meeting with Susan Lee and requested to join the discussion about transgender patient care experiences with Amanda Heenan, Susan Lee refused this request in a humiliating and undermining manner in front of everyone and commented “No, it is only for members of this group”.

12. On 13 May 2021, the claimant attended a meeting with Susan Lee and asked again for some more independence in her role, this was refused by Ms Lee. The claimant was told that “this is administrative level job only, nothing else” and that her role was “operational support.” Ms Lee went on to direct the claimant to seek her approval and that of Helen Davis before accepting/attending any meetings, cancelled a Health Inequalities meeting the claimant was going to have and attempted to cancel a BAME Networks meeting as well.

13. On 16 and 18 May 2021, Erica Daley ignored and/or failed to engage with the concerns that the claimant was raising about her employment.

14. On 17 May 2021, at a meeting with the claimant, Susan Lee and Moira Stephenson, the claimant was berated by both Ms Lee and Ms Stephenson for attending the LMC meeting ‘anti-racism task and finish group,’ and then being informed of unspecified issues with her employment. When the claimant requested information about these issues from Susan Lee this was no provided and reference was made to a fast track probation review, an oblique reference to the termination of the claimant’s employment.

15. On 21 May 2021, the claimant was suspended upon an allegation made that she had breached confidentiality without being given clarification of the allegation

against her and was informed by Moira Stephenson that “You are better off resigning then run the risk of losing this job on misconduct. With such a record, you will never find another job with the NHS”.

16. On 24 May 2021, the claimant’s probationary period was deemed to be unsuccessful on a discriminatory basis, no proper assessment had been made of her performance and the decision to terminate the claimant’s employment was discriminatory.

17. On 24 May 2021, Moira Stephenson calling the claimant to inform her that she had looked at her grievance “briefly” despite it being sent to Ms Kirkwood and informed the claimant that she “didn’t want to step” on her toes.

18. Ongoing, the claimant’s grievances and suspension have been unduly delayed and procedurally flawed which has caused a severe deterioration in the claimant’s mental health.