Case No: 2301003/2015

THE EMPLOYMENT TRIBUNAL

SITTING AT: **LONDON SOUTH**

BEFORE: **EMPLOYMENT JUDGE K ANDREWS**

MEMBERS: **Mrs R Bailey**
Ms S Murray

BETWEEN:

Ms C Atino
Claimant

and

Royal Borough of Greenwich
Respondent

ON: **18- 21 April 2016 and**
7, 10 & 29 June 2016 in chambers

Appearances:
For the Claimant: **Ms L Hudson, Counsel**
For the Respondent: **Ms S Omeri, Counsel**

JUDGMENT

The unanimous decision of the Tribunal is that all claims fail and are dismissed.

REASONS

1. In this matter the claimant complains that she was unfairly constructively dismissed, her contract of employment was breached and has been discriminated against because of her colour; she is black.

Issues

2. The headline issues arising in respect of each claim are as follows:

3. Direct race discrimination or harassment: did the acts set out at paragraph 2 of her particulars of claim, further detailed in an undated Scott schedule prepared by the claimant, happen and if so did they amount to direct race discrimination or harassment on the ground of her colour?

4. Indirect race discrimination: did the respondent operate a practice of managers speaking to individuals whom they considered to be suitable for particular roles and inviting them to apply for internal vacancies and that as a result employees not spoken to would not usually apply for vacancies and if they did their applications would not be taken seriously? Were the majority of managers white and accordingly did they have a better rapport with white employees resulting in black employees being disadvantaged?

5. Were the claims of race discrimination presented to the Tribunal in time and, if not, would it be just and equitable to extend time?

6. Unfair constructive dismissal: did the acts alleged by the claimant to constitute direct race discrimination and harassment amount, separately and together, to a fundamental breach of contract by the respondent entitling her, following an alleged "last straw" at a meeting on 11 September 2014, to resign in response?

7. Breach of contract: (a) did the respondent breach the claimant's contract when it failed to allow her to take up a post in the Nil Recourse to Public Funds (NRPF) team or function in 2011 and (b) did the respondent fail to pay the claimant the notice pay to which she was entitled when she resigned? It became apparent during the course of evidence that in fact the claimant was paid in respect of her notice period. Her claim of breach of contract in respect of that therefore must fail. This was not formally withdrawn at the hearing and therefore for completeness this part of her claim fails and is dismissed.

8. In respect of her claims generally, a number of matters were raised in the claimant's witness statement apparently for the first time. We have not considered allegations that were not previously pleaded in either the claim form or the Scott schedule.

Evidence & Submissions

9. We heard evidence from the claimant and for the respondent from:
    a. Mr T Huage, Team Manager;
    b. Ms C Northover, Integrated Services Manager;
    c. Mr G Jones, former Service Manager; and
    d. Ms E Jackson, Manager.

10. We were also referred to an agreed bundle of documents to which a number of documents were added by both parties during the course of the Hearing.

11. At the conclusion of the Hearing Counsel for both parties made full and helpful submissions for which we are grateful.

Relevant Law

12. Direct discrimination: Section 13 of the Equality Act 2010 (the 2010 Act) provides that a person discriminates against another if, because of a protected characteristic, he treats that person less favourably than he treats or would treat others. Race - which includes colour, nationality and ethnic or national origins - is a protected characteristic.

13. To answer whether treatment was "because of" the protected characteristic requires the Tribunal to consider the reason why the claimant was treated as he/she was. The Equality and Human Rights Commission Code of Practice states that whilst the protected characteristic needs to be a cause of the less favourable treatment it does not need to be the only or even the main cause.

14. It is a matter for the Tribunal to determine what amounts to less favourable treatment to be interpreted in a common sense way and based on what a reasonable person might find to be detrimental.

15. Section 23 of the 2010 Act refers to comparators and says that there must be no material difference between the circumstances relating to each case. The relevant "circumstances" are those factors which the employer has taken into account when treating the claimant as it did with the exception of the protected characteristic (Shamoon v Chief Constable RUC 2003 IRLR 285). In this case where the claimant has not referred to an actual comparator we have constructed a relevant hypothetical one.

16. Indirect discrimination: Section 19 of the 2010 Act states:

> "(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.
>
> (2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
>
> (a) A applies, or would apply, it to persons with whom B does not share the characteristic,
>
> (b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
>
> (c) it puts, or would put, B at that disadvantage, and
>
> (d) A cannot show it to be a proportionate means of achieving a legitimate aim."

17. Harassment: Section 26 of the 2010 Act provides that A harasses B if A engages in unwanted conduct related to a relevant protected characteristic and that conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. When deciding whether conduct has had that effect subsection 4 us to take into account the perception of B, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

18. Two authorities give helpful guidance in applying these provisions: Richmond Pharmacology Ltd v Dhaliwal (2009 IRLR 336) and Land Registry v Grant (2011 IRLR 748) where Elias LJ said:

"Where harassment results from the effect of the conduct, that effect must actually be achieved. However, the question whether conduct has had that adverse effect is an objective one – it must reasonably be considered to have that effect – although the victim's perception of the effect is a relevant factor for the tribunal to consider. In that regard, when assessing the effect of a remark, the context in which it is given is always highly material.

Moreover, tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

19. Burden of proof: It is also relevant to consider the law on burden of proof which is set out at section 136 of the 2010 Act. In summary, if there are facts from which the Court could decide in the absence of any other explanation that the claimant has been discriminated against, then the Court must find that that discrimination has happened unless the respondent shows the contrary. It is generally recognised however that it is unusual for there to be clear evidence of discrimination and that the Tribunal should expect to consider matters in accordance with the relevant provisions in respect of the burden of proof and the guidance in respect thereof set out in Igen v Wong and others ([2005] IRLR 258) confirmed by the Court of Appeal in Madarassy v Nomura International plc ([2007] IRLR 246). In the latter case it was also confirmed, albeit when applying the pre-2010 Act wording, that a simple difference in status (whether race or sex) and a difference in treatment is not enough in itself to shift the burden of proof; something more is needed. It is important in assessing these matters that the totality of the evidence is considered.

20. Time limits for discrimination claims: Any complaint of discrimination may not be brought after the end of the period of three months starting with the date of the act complained of or such other period as the Tribunal thinks just and equitable (section 123 of the 2010 Act). That three-month period will also be extended on occasion by the impact of the ACAS early conciliation provisions.

21. There is guidance for Tribunals in exercising that discretion from the Court of Appeal in Robertson v Bexley Community Centre (2003 IRLR 434). The Tribunal has a very wide discretion in determining whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant subject however to the principle that time limits are exercised strictly in employment cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise the discretion. On the contrary the Tribunal cannot hear a complaint unless the Claimant persuades it that it is just and equitable to extend time. The exercise of discretion is the exception, say the Court of Appeal, rather than the rule.

22. Conduct extending over a period is to be treated as done at the end of that period and when deciding if there is such conduct Hendricks v Commissioner of Police for the Metropolis [2002] EWCA Civ 1686 confirms that the correct focus is on the substance of the complaint that

the respondent is responsible for the state of affairs leading to the alleged discrimination. This approach has been confirmed in the context of the 2010 Act in Rodrigues v Co-operative Group EAT July 12.

23. In O'Brien v Department for Constitutional Affairs [2009] IRLR 294 the Court of Appeal held that the burden of proof is on the claimant to convince the Tribunal that it is just and equitable to extend time. In most cases there are strong reasons for a strict approach to time limits.

24. When considering anything that it considers relevant a Tribunal will also look at the factors listed in section 33 of the Limitation Act 1980 which include a) length and reasons for delay, b) the likely affect of the delay on the evidence c) the promptness with which the claimant acted once they knew the facts d) their knowledge of the time limits and e) the steps they took to get professional advice (British Coal Corp v Keeble 1997 IRLR 336)

25. It is relevant for the Tribunal to consider the merits of claim when assessing whether to exercise its discretion but only if it has heard the evidence and submissions (Lupetti v Wrens Old House EAT 1984 ICR 348).

26. Unfair Dismissal: In order to bring a complaint of unfair dismissal it is first necessary to establish that the claimant has in fact been dismissed.

27. If there is no express dismissal then the claimant needs to establish a constructive dismissal. Section 95(1) of the Employment Rights Act 1996 states than an employee is dismissed by his or her employer for the purposes of claiming unfair dismissal if:

> "(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

28. Case law has established that to succeed in such a claim the employee must establish that:
    a. there was a fundamental breach of contract on the part of the employer;
    b. the employee resigned in response; and
    c. the employee did not affirm the contract before resigning.

29. In Western Excavating (ECC) Limited –v-Sharpe [1978] ICR 221, the Court of Appeal confirmed that the correct approach to considering whether there has been a constructive dismissal is as follows:

> "if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct, he is constructively dismissed."

30. Those terms of the contract include not only the express terms set out in writing or orally but also the term of mutual trust and confidence that is implied into every contract of employment and which, if breached, is capable of constituting a fundamental breach.

31. In assessing whether there has been a fundamental breach of that term the House of Lords in Malik v BCCI SA (in liquidation) [1997] IRLR 462 (as corrected by Baldwin v Brighton & Hove CC [2007] ICR 680) confirmed that the employee needs to show that the employer has, without reasonable and proper cause, conducted himself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between them. This conduct is to be objectively assessed by the Tribunal rather than by reference to whether the employer's conduct fell within the band of reasonable responses. In Leeds Dental Team Ltd v Rose [2014] IRLR 8 the Employment Appeal Tribunal held that the employer's subjective intention is irrelevant. It is for the Tribunal to consider objectively whether the conduct complained of was likely to have that effect.

32. Furthermore, individual actions taken by an employer which may not in themselves constitute fundamental breaches of any contractual term may have a cumulative effect of undermining trust and confidence thereby entitling the employee to resign and claim constructive dismissal. These sorts of cases are often referred to as last straw cases. The last straw complained of must contribute to the breach even if relatively insignificantly but need not in itself be a breach but nor can it be entirely innocuous. The case of London Borough of Walton Forest v Omilaju [2005] IRLR 35 gives guidance to Tribunals of the correct approach to take.

33. Breach of Contract: any claim in respect of a breach of contract will be defeated if an employee continues to work for a significant time to terms and conditions to which they object before bringing proceedings and this, when objectively assessed, amounts to an acceptance of the revised terms.

Findings of Fact

34. A number of the allegations put forward by the claimant consisted of only her statement with no corroborating evidence. In assessing the likelihood therefore of whether alleged facts happened or not, we have had to take into account on a number of occasions our evaluation of the various witnesses' credibility. On a general level we observe that at times the claimant was vague and confused in her answers. We did not form the same view in respect of any of the respondent's witnesses.

35. The facts relevant to the various complaints/issues overlap and also span a considerable period of time, dating back to 2011. Rather than set out one continuous chronology therefore it is more useful to deal with our findings by reference to each claim and aspect thereof, as recorded above under "Issues" and also by reference to the claimant's Scott schedule. A

copy of the schedule is attached at Appendix A annotated to show numbered allegations.

36. The general background however is that the claimant, a well qualified and experienced social worker, commenced working for the respondent on 16 February 2004. Until 1 April 2011 she worked in the Community Mental Health (CMH) team. Her statement of terms and conditions issued at the start of her employment state under "Post/Job":

    "Directorate/Department: Social Services
    Section: Adults Older people & Disabled People CMH Team
    Post/Job Title: Social Worker…"

37. Within Social Services, the Assistant Director for which was Mr J Stickland, there are a number of teams that are managed by Service Managers. Mr Jones was Head of Service. He confirmed that there are a number of teams within the Older Peoples Service and therefore the above seems to indicate that the claimant was assigned to the CMH team. Elsewhere in the statement there is a mobility clause that deals with the respondent's right to vary the claimant's place of work but there is no clause giving a right to vary duties generally as one sometimes sees in contracts and we were not referred to any such clause in any relevant collective agreements.

38. Accordingly, we find that it was a term of the claimant's contract when she commenced employment that she was employed in the CMH team. Any unilateral variation to that therefore would be a breach of her contract.

39. The statement of terms also provided for:
    a. a normal start working time of 9am;
    b. a minimum notice of termination by the employee of 1 calendar month;
    c. a disciplinary procedure;
    d. a grievance procedure; and
    e. an equal opportunities policy in respect of employment and also more widely in the community.

40. Turning to the facts relevant to the specific claims:

41. <u>Breach of Contract – NRPF role</u>

42. As a result of a major reorganisation in 2010 the claimant was notified on 8 December 2010 that she would be assimilated into a Social Worker – Level 2 post in the Adults & Older Peoples Services directorate with effect from 1 December. She, along with a number of other employees, was moved from the CMH team to the Specialist Social Work Team (SSWT), which incorporated a number of teams including the older people and physical disabilities team (OP/PDSS), and was managed by Mr Jones. She had previously expressed a preference to remain with CMH.

43. A staffing list issued in March 2011 shows that she had been allocated to NRPF within OP/PDSS. That was in keeping with a letter issued to the

claimant on 7 March which confirmed her position was in the NRPF team. The respondent said that that letter was issued in error but the fact is it was issued to the claimant and she reasonably relied upon it. We heard evidence about whether NRPF was a team or just a function. Whichever was the case it was part of the OP/PDSS within SSWT managed by Mr A Boyles and Ms Jackson, both Team Managers, who reported to Mr Jones. It was directly managed by Mr Huagie (Assistant Team Manager). The claimant was due to commence in this role on 1 April but she was in fact off sick and did not return to work until 25 May. On her return she was allocated to work in the Community Assessment and Rehabilitation (CAR) team from 7-25 June and then worked for a short time in the Hospital Integrated Team (HIT).

44. There was considerable staff movement following the restructure and, it seems, confusion. In due course Mr Stickland decided that all staff should return to the role they had been allocated in the restructure. As a result the claimant returned to SSWT with effect from 1 August. This decision affected a number of employees in the same way.

45. On her return to SSWT she was not allocated to NRPF work but to generic social work reporting to Ms Jackson. This team comprised approximately 24 employees of whom 13 were non-white and 11 were white British. The claimant's role was to carry a caseload of complex cases ensuring the safeguarding of vulnerable adults.

46. The claimant continued to be managed by Ms Jackson until her resignation. Regular supervision meetings were held between them throughout.

47. Direct race discrimination & harassment:

48. Allegations 1-5: The first five allegations in the Scott schedule arise out of the 2010 restructure described above and the allocation of roles in 2011 to the claimant. Not unreasonably given the passage of time the relevant witnesses for the respondent were unable to recall some or all the details of conversations they had with the claimant at the time or the exact basis for the decisions made.

49. It is clear however that the restructure was a major one that affected all the staff in the same way in that there was a lot of change and reallocation and not everyone was able to be accommodated with their preferences. It does appear that the claimant was moved a number of times in a short space of time and it may well be that she was not given satisfactory explanations of the reasons why at the time. It is also likely that she was not given notice nor consulted nor her agreement sought. This no doubt was very frustrating for the claimant and may well have made her anxious, confused and stressed as she alleges. The claimant, in answer to a question from the Tribunal, expressly confirmed that she was the only employee who was repeatedly moved and that others, white and black, were not. We find that the claimant was not treated any differently in this respect to any other employees. This is emphasised by Mr Stickland's

decision in August 2011 that everyone should return to their originally allocated post.

50. The claimant did raise her concerns with Ms Jackson in their first supervision meeting on 17 August 2011. She said she had found the transfers unsettling and asked for confirmation of where her substantive post was based. Ms Jackson agreed to discuss this with Mr Jones. At a supervision on 10 October Ms Jackson apologised that she had not raised the issue with Mr Jones and at a supervision on 29 November it was again discussed. Ms Jackson's notes, signed by the claimant, show that the claimant said she was now unsure whether she wanted the NRPF post. The claimant says that those notes are inaccurate and that a number of such notes prepared by Ms Jackson were inaccurate. Unless stated otherwise we find that Ms Jackson's notes of supervisions with the claimant are accurate – they were prepared at or shortly after each meeting, were copied to the claimant and on the whole were signed by both of them (though sometimes were signed by the claimant much later and, she said, signing them did not mean she agreed their contents).

51. Ms Jackson was unable to recall whether she discussed this issue with Mr Jones but said that she thought she did. Whether she did or not it is clear that ultimately the claimant accepted working in the generic role in SSWT without continuing objection. If Ms Jackson did not discuss it with Mr Jones this was due to pressure of work/oversight rather than for any discriminatory reason.

52. A specific allegation of the claimant is that in this period she tried to discuss the situation with Mr Jones but she was "waved off" by him. He absolutely denied this. We accept his evidence and find it is most unlikely that he would have behaved as the claimant described.

53. Another specific allegation is that when the claimant returned to SSWT in August she was told that her substantive post in NRPF had been filled by a Level 1 (and therefore more junior) social worker Ms S Mukasa. Further that Mr Jones had deliberately ensured the role was not available to the claimant by trying to fill it while she was with the CAR and HID teams. Mr Jones's evidence was that he and Mr Huage agreed it would be covered by a rota as there was no funding for a permanent employee. Even if the claimant had a contractual entitlement to a NRPF role we find that Mr Jones's decisions regarding this issue of resourcing were reasonable and untainted by discrimination.

54. In relation to her complaints arising out of the 2010 restructure the claimant compares herself to Ms Sandra McCredy a white British Level 2 social worker. Ms McCredy was off sick at the time of the reorganisation but on her return to work took up the post to which she was assimilated under the restructure, a specialist funded post in the Hospital Discharge Team. The claimant's case is that she was also assimilated to a specialist post (NRPF) but was treated differently to Ms McCredy as she was not allowed to take up her role. Even if the NRPF role was a specialist post, it was an unfunded one and therefore Ms McCredy is not a relevant

comparator. Even if we are wrong about that, the reasons for the treatment of the claimant compared to Ms McCredy were as described above and therefore were not because of her race. The claimant offered no real evidence to support her claim that the reason for the difference in treatment was race.

55. Allegation 6: the claimant says that in about October/November 2012 she was asked by Ms Jackson, on Mr Jones's instructions, whether she was still interested in the NRPF post as it was again vacant and she said she was. She says that on the following day Ms Jackson told her in an offhandish manner that Mr Jones would no longer give it to her. It was later filled by Ms Opoku, an agency worker, who is also black.

56. Mr Jones's evidence, which we accept, was that he cannot specifically recall asking Ms Jackson to ask the claimant if she was interested in NRPF work but he may have done. In any event Ms Opoku was engaged to do the work as she had experience of both that work and children's work and at that time they were bringing adult and children NRPF work together.

57. Allegation 7:

58. On 5 November 2012 the claimant visited Mr and Mrs R. Mrs R was the beneficiary of a care package provided by the respondent. She was very vulnerable. Mr R, with whom she lived, was an alcoholic with significant personal problems and was often unable to care for his wife. During that visit he confirmed that his wife only wanted a white care worker.

59. On her return to the office the claimant discussed this with a Team Manager (Ms Jackson was on leave). She was advised to visit Mr R again and to explain service provision in relation to the respondent's equal opportunities policy. She attended Mr and Mrs R on 6 November with another employee. The records from the time do not make it clear whether she conveyed that message.

60. In any event the issue continued and on 5 February 2013 the claimant and Ms Jackson discussed the situation. The outcome, approved by Mr Jones, was that Ms Jackson asked the claimant to find an agency that would supply white care workers for Mrs R. Ms Jackson's evidence was that she asked the claimant if she was okay with that and she agreed. The claimant said she did not agree and felt humiliated at having to carry out this instruction but she accepted that she made no complaint to Ms Jackson at the time. We find that Ms Jackson did ask the claimant whether she was okay to carry out the instructions and that the claimant was well aware of the context and the various factors being taken into account. It proved difficult at first to find a care agency that was able to provide only white workers but ultimately one was found and the service was commissioned.

61. The evidence of both Mr Jones and Ms Jackson, which we accept, was that this instruction was not condoning race discrimination but was the result of a careful balancing of the respondent's duty to uphold its equal

opportunities policy, to protect its black workers and also to safeguard Mrs R who was very vulnerable and required continuing care.

62. Allegation 8: the claimant says that from the beginning of August 2011 to her resignation Mr Jones would deliberately avoid her, not sit next to her in the open office, turn his back on her and hang up the phone on her when she called. No corroborating evidence was offered by the claimant.

63. Mr Jones's evidence was that this was all simply untrue and he gave a credible explanation of why not by describing his usual working practices and how he managed and interacted with the whole team

64. Indeed his case is that the SSWT worked in an open plan office with allocated desks but the claimant would often choose to sit in a different area despite being asked by Ms Jackson to sit with the rest of the team when possible. Ms Jackson confirmed that the claimant chose to sit away from the team and she raised it with her as an issue during supervisions. The claimant said that she sat away from the team in part because she preferred the lighting there (which is reflected in her supervision notes). Also because she arrived later than the rest of the team (a 9.30am start had been agreed by Ms Jackson to accommodate the claimant's personal circumstances) there were often not seats available near the team to which the respondent says she should have moved during the day as seats became available. We find that on occasion at least the claimant sat away from the rest of the team through choice rather than being deliberately isolated.

65. We find that there is no basis for concluding that Mr Jones treated the claimant in the way that she describes.

66. The claimant also alleged that Ms Jackson would only speak to her when necessary and deliberately managed her unfairly. She gave an example of when in early 2014 she made arrangements with another employee to swap duty for 2 hours and Ms Jackson told her off publicly for doing this and that she would now have to swap for the whole day.

67. Ms Jackson said she could not remember this incident but that she would not have behaved as the claimant described as it would have been unfair. We find that the claimant was not reprimanded in public on this occasion. As regards the relationship between the claimant and Ms Jackson generally, bearing in mind the claimant's own comments in her 2012/13 performance plan and resignation letter, both quoted below, and the fact that it was Ms Jackson who agreed to vary the claimant's start time, we find that Ms Jackson's treatment of her was generally fair and reasonable and not as described by the claimant.

68. Allegation 9:

69. The claimant says that very little attention was paid to her professional development. We considered carefully the notes of the supervision sessions held between Ms Jackson and claimant from August 2011.

These sessions were held regularly with specific cases and wider issues such as training needs and professional development discussed. Due to pressure of time and workload some sessions would focus more on casework however the documentary evidence in support of professional development being offered and discussed is compelling. We saw evidence of a number of supervision sessions and employee performance plans which demonstrated that the claimant's professional development had been pursued.

70. The claimant conceded in cross-examination that some of her development needs had been met and was unable to specify which of her needs had not nor specifically what Ms Jackson should have done to support her that she did not. She agreed that she had been offered but not taken up the opportunity to take on a student.

71. We find that appropriate and reasonable support was given by Ms Jackson to the claimant in respect of her training and professional development needs.

72. Allegation 10:

73. In August 2013 the claimant had formed the view that there were no continuing concerns regarding the care package in place for Mr & Mrs R. She says that she discussed this with Ms Jackson and they agreed to close the case and review it in 3-6 months. They also discussed it a few weeks later after intervention from the school of Mr & Mrs R's grandchildren. Again the claimant says that she reviewed matters, discussed it with Ms Jackson but no further action was taken other than giving advice to Mr & Mrs R's daughter regarding accommodation.

74. On 15 November an emergency visit was carried out by the claimant and Ms Nesbit following an urgent referral. They found that safeguarding and urgent care was needed.

75. The claimant says that on their return to the office Ms Jackson discussed the case only with Ms Nesbit and did not discuss it with her in their supervision that day. Also that shortly after that meeting the cases were transferred to Ms Nesbit without notification to the claimant. The claimant says that this was a deliberate attempt by Ms Jackson to undermine and frustrate her. She says that notes of that supervision which she received a few days later wrongly stated that they had discussed the case and that she challenged Ms Jackson about this but Ms Jackson was unconcerned and when the claimant pursued it said in a threatening way that they would need to speak to Mr Jones. The claimant says she felt under pressure and therefore against her better judgment signed the notes.

76. The claimant and Ms Jackson discussed the matter again in early December and Ms Jackson was critical of the claimant's handling of the matter. The claimant says she felt that she was not being treated with respect.

77. The respondent disputed this version of events. In particular Ms Jackson says that the cases were discussed at the supervision in November as indicated by the claimant's signature of the notes and that the cases were removed from the claimant because she had failed to spot signs of harm and this was nothing to do with her colour. They were given to Ms Nesbit as she had relevant experience and capacity. We prefer Ms Jackson's version of events, which is supported by contemporaneous documents, and find that to be accurate.

78. Allegation 11:

79. This is dealt with below with indirect discrimination.

80. Allegation 12:

81. The claimant says that she endured a considerable amount of abuse and threats from the wife of service user BO. The BOs are a black couple. The claimant did not give specific dates but this was sometime before May 2013. The claimant says that if she were white she would have been withdrawn from the case and that furthermore when the wife of BO abused a white employee, Mr MacPherson, he was withdrawn. The claimant says that the case could have been rotated to one of the other seven social workers in the team.

82. Ms Jackson acknowledged that the case was challenging but said that she always ensured that the claimant undertook joint visits and that some of those joint visits had been with Mr MacPherson. She also denied withdrawing Mr MacPherson from the case in May 2013 stating that he had visited again with the claimant in July 2013. Further she stated that the wife of BO was verbally abusive to everyone and difficult to work with but did not present a health and safety risk.

83. It is clear that BO was a long-term, complex and challenging case as the majority of cases in the team were. We accept that Ms Jackson did not believe in routinely rotating cases and find that she managed this difficult case as best she could in the circumstances and that the claimant's race was not a factor in her decision making.

84. In relation to the claimant's allegations of lack of support in preparing for a court case involving BO, Ms Jackson explained that the deadline for submission of papers required from the claimant was set by the respondent's legal department not her and that the claimant took several weeks to complete them. Further that she had to keep reminding the claimant of the importance of completing the task and she would have done the same with any other staff member. She did not accept that she gave the claimant an unreasonably short time period.

85. In the event the legal department were unhappy with the report by the claimant and Ms Jackson spent considerable time rewriting it herself although she could have asked the claimant to do that.

86. The claimant compared herself to a white employee, Ms Lucaciu, who she says was given two weeks to write a court report whereas the claimant was given much less time. Ms Jackson was unable to comment specifically on the comparator because she did not supervise her and did not know about her work.

87. We find that Ms Jackson gave the claimant at least the same amount of time as was given to her comparator by another manager. Further we find that Ms Jackson was carrying out her duties as a conscientious line manager.

88. Allegation 13:

89. Ms Jackson was on leave when the claimant's brother in Uganda died on 4 January 2014. The claimant told Mr Jones but Ms Jackson was not aware of it until her return on 9 January. She was in meetings all that day and a supervision with the claimant was already booked for 10 January.

90. The claimant says that she asked Ms Jackson to move the supervision to the afternoon so that it would not coincide with the time of the burial of her brother and that Ms Jackson refused and said "after all you will not be attending the burial" and that the meeting had to proceed.

91. Ms Jackson says that the claimant did not request a postponement in advance and that if she had there would have been no reason to refuse it in the same way that other supervision meetings had been postponed. She says that at the beginning of the meeting the claimant informed her of her loss, that the burial was that day and she then asked the claimant if she needed a break at the time of the burial but the claimant said no. The claimant says that as she had already been refused a postponement there was no point in again requesting one.

92. The claimant says that Ms Jackson's manner during the session was taunting and jeering and that she told her to let her know if she needed to cry. Ms Jackson denied this emphatically. She said "I abhor the suggestion that I would behave to anyone like that and I didn't". When it was put to her that she behaved in this way because the claimant is black she replied that this was an abhorrent thing to say and she would not treat anyone like that. She said she had suggested the claimant might like to go somewhere quiet and maybe have a cup of tea but absolutely refuted the claim that she had said "go and have a cry". Ms Jackson became visibly upset at this stage and the Tribunal took a break.

93. The claimant commented that the respondent's witnesses were able to remember some incidents and not others when they said it was too long ago. For that reason, she cast doubt on Ms Jackson's ability to recall this particular meeting. We do not accept that criticism. We accept the account of this meeting by Ms Jackson. It is not surprising that she could recall this meeting as it was important to her because she was concerned and sympathetic to an employee's bereavement.

94. Allegation 14:

95. The claimant says that in July 2014 she was threatened by Mr C, the husband of a service user, whilst the white colleague accompanying her was not threatened. Ms Wybourne, an Assistant Team Manager, suggested a letter be written to Mr C explaining that his behaviour would not be tolerated but Ms Jackson instead told the claimant she would give the case to Ms Nesbit and no action was taken against the husband.

96. It is clear that the claimant was threatened by Mr C and on balance we find that Ms Wybourne did suggest a letter be written. Ms Jackson's evidence was that Ms Wybourne did not suggest this course of action to her but in any event she did not consider writing a letter to Mr C was appropriate as he was experiencing the effects of advanced dementia and therefore a letter would have no effect. She said that she discussed with the claimant that Mr C's attitude was unacceptable but due to his condition challenging him would serve no purpose. She said she acknowledged that because of what claimant had experienced it would not be acceptable for the claimant to remain on the case and that is why it was reallocated.

97. The claimant denied Mr C had advanced dementia at the time and said that Ms Jackson was abrupt and dismissive. She said there was no attempt made to speak to her about the incident or to reflect on what had happened.

98. We consider Ms Jackson's evidence to have been consistent and credible and accept her account. We find that her solution to the situation was a reasonable response to protect the claimant.

99. The claimant also compared the respondent's response to the situation with Mr C (swapping the claimant with Ms Nesbit) with their response to BO (not swapping her). We do not find that this comparison demonstrates a difference in treatment due to race but rather reflects that Ms Jackson was making the best decisions she could in all the circumstances case by case.

100. Allegation 15:

101. The claimant complains that her duty rota was not reduced by the respondent to take into account that she had responsibility to provide Approved Mental Health Professional (AMHP) cover 2 days per month in comparison to colleagues who provided similar cover as Best Interest Assessors (BIA). She says this resulted in a heavy workload which meant that she had to stay late almost daily and was put under pressure. Further that Ms Jackson discouraged her from pursuing AMPH work which the claimant regarded as an opportunity for progression.

102. The respondent's case broadly was that none of these allegations were true, that the claimant's workload was no higher than anyone else in the team, that her cases were complex because she was a Level 2 social worker and that Ms Jackson did not discourage her progression. Further it

was put to the claimant that employees on the BIA rota do not have their time on the duty rota reduced to which the claimant said "I don't know about that". Ms Jackson also said that she had no reason to discourage the claimant's interest in AMPH work as there were not many people with that qualification and they were needed by the respondent.

103. No evidence was put before us as to the ethnicity of the employees on the BIA rota.

104. On this allegation we are faced with a straight conflict of evidence between the claimant and Ms Jackson with no corroborating evidence for either position. On the basis of the strength of the respective evidence and witnesses we prefer Ms Jackson's account.

105. Allegations 16 & 17:

106. While the claimant performed her AMHP role as described above, she reported to the AMHP duty manager. She would record her whereabouts in the SSWT movement book as being on the AMHP duty. If the AMHP team did not require her services she was required to return to the SSWT and update the movement book accordingly.

107. On 3 September 2014 the claimant was shown in the movement book as being on AMHP duty all day. She was due to have her AMHP re-approval interview that afternoon but that morning was having difficulty in printing out a portfolio of reports required at the interview. She therefore telephoned the AMHP duty manager and explained that she was running late. The duty manager informed her that they were not expecting her on duty that day because she had the interview in the afternoon. The claimant decided to carry on sorting out her printing and said she made a note in her diary to ask Ms Jackson, who was on leave at the time, if she could take morning of 3 September as annual leave as her own team were not expecting her return until the following day. She went into the business centre which is near the SSWT at 1pm to again try to print her reports and then to the interview and went home after 5pm.

108. When the claimant returned to SSWT on the following day, finding that Ms Jackson was on leave until next week, she decided to wait until Ms Jackson's return to inform her of the half day leave she had taken. She did not discuss it with any other manager. The claimant told the Tribunal that if she had not had printing problems she would have been on AMHP duty not SSWT work and would just have taken time out in the afternoon to do her interview.

109. When Ms Jackson returned from leave on 10 September a manager told her that she had seen the claimant in the SSWT office at 11am on 3 September although the movement book recorded her as being on AMHP duty all day which would normally commence at 9am.

110. Ms Jackson's evidence was that there had been some concerns in 2013 and earlier in 2014 about the claimant's movements and not

recording properly where she was at any time. The claimant denied that she had in any way not followed the rules. Regardless of who is right Ms Jackson clearly had these concerns in mind when the events of 3 September were reported to her. She contacted the AMHP team manager and was informed that the claimant had not reported there on 3 September.

111. On 10 September Ms Jackson asked the claimant to attend a meeting with Mr Jones and her at 9:30am on 11 September. The claimant says that she asked what the meeting was about but Ms Jackson did not tell her. Ms Jackson did not recall whether the claimant had asked this but did recall asking the claimant to bring her leave card with her.

112. At the meeting the claimant explained about events on 3 September. There was confusion about whether Ms Jackson had known about the reapproval interview and a break was taken for Mr Jones to discuss this with Ms Jackson. Ms Jackson told him she could not recall having been told about it but even accepting that an email to that effect was sent to her she would still expect the meeting to be recorded in the movement book. Further the claimant was still required to attend ordinary duties in the morning.

113. When the meeting resumed Mr Jones asked the claimant if she had spoken to any of the SSWT managers about her movements that day. She said that she had contacted the AMHP manager and showed Mr Jones and Ms Jackson the note she said she had made in her diary about asking for leave. Mr Jones's evidence, which we accept, was that at the point where the claimant was told she was not needed at AMHP she was required to return to SSWT and that she had been working for the respondent long enough to know that employees cannot absent themselves without authorisation and that leave had to be agreed by a manager except in an emergency.

114. At the meeting he informed the claimant that what she had done was "quite serious" and "unacceptable". She appeared to him to be defensive and did not think she had done anything wrong. He particularly reminded her of the need to seek authorisation for leave in advance, to complete the movement book accurately at all times, to speak to another manager if her own was unavailable to report any absences immediately and that she should sit in the SSWT area if a seat was available.

115. The claimant's evidence was that she explained that she was not expected in the SSWT until 4 September and this was written in the movement book. She said that Mr Jones ignored what she was saying and told her they would be giving her a formal written warning.

116. Mr Jones's evidence was that the meeting was on a management issue that needed to be dealt with immediately and was not part of a disciplinary process. He said that the claimant was not told she would receive a warning although she was advised that what she had done was unacceptable. Ms Jackson confirmed his account.

117. The claimant's evidence was that Ms Jackson's words in the meeting were oppressive and intimidating and that no white colleague would have been treated in that way. She said that Ms Jackson's and Mr Jones's intention was to resort to the disciplinary procedure and giving her a written warning was a deliberate, calculated attempt to eventually dismiss her. She did however concede in cross examination that it was reasonable for her line manager to ask her to attend a meeting and to raise with her the matter of her whereabouts on 3 September.

118. We find that the key difference between the claimant's and the respondent's account of this meeting goes to feeling and perception rather than specifically what was said, with the exception of whether Mr Jones said the claimant would be given a final written warning. As to the tone of the meeting it is clear that an issue had arisen that needed to be dealt with and the claimant cannot have been in any doubt that her management team believed she had not acted appropriately. We do not find however that either Mr Jones or Ms Jackson was in any way intimidating or oppressive towards the claimant in the meeting nor that her race was a factor in their treatment of her. The reason for the meeting was a valid managerial concern.

119. The unanimous view is that Mr Jones did not expressly say that the claimant would receive a formal written warning. Both he and Ms Jackson were persuasive in their evidence and we have also taken into account that it is more likely than not that if they had said she would receive a warning then one would have been issued. None was issued before the claimant resigned on 1 October.

120. The minority view (Ms Murray) however is that something must have been said in this meeting to lead the claimant to believe she would receive something in writing but in any event, as stated above, this did not amount to Mr Jones saying she would receive a formal written warning.

121. <u>Allegation 18:</u>

122. The claimant says that she was subjected to closer monitoring than her colleagues and that this was because she was black. She referred in particular to Ms Jackson checking on her attendance times and also chasing her to close cases. She gave no evidence as to specific comparators.

123. As far as her attendance times were concerned, as noted above the claimant had been allowed by Ms Jackson to commence work half an hour later than the normal start time of 9am. It was established during the course of the hearing by looking at movement sheets from 2013 (which were provided on day 2 of the hearing by the respondent at the request of the claimant) that she did in fact arrive later than 9:30am on a number of occasions. There was evidence from the claimant that when she was running late she had phoned in with messages and that they had not been passed on to her manager. Even if that is correct, she did not challenge the fact that she had arrived after 9:30am on several occasions. Her

lateness was also raised during a number of supervision sessions by Ms Jackson.

124. Ms Jackson's evidence was that she only monitored the claimant more closely than she would otherwise expect to do with a senior experienced social worker where she was given reason to be concerned about her work or working practices. These concerns were raised and recorded at supervisions. In particular there was evidence that the issue of the claimant having to be reminded to close cases was raised on several occasions with her.

125. In view of her concerns about the claimant's work performance it was reasonable for Ms Jackson to approach her to check whether she had completed various tasks. In fact this was an intrinsic part of her duties and responsibilities as a line manager. Accordingly when the claimant was monitored more closely by Ms Jackson than other employees this was due to her valid concerns about the claimant's performance/timekeeping and race played no part in that.

126. Indirect race discrimination & allegation 11 direct race discrimination/harassment:

127. Dealing first with the position regarding the number of managers and their ethnicities, the claimant's position is that the majority were white and accordingly they had a better rapport with white employees resulting in disadvantage for black employees. The respondent's position is that within the OP/PDSS team there is indeed a majority of white managers but only just. There were 5 managers of whom 3 were white and 2 were non-white, Mr Huagie who is black and Ms J Sharma who is Asian, both of whom were Assistant Team Managers. Ultimately they all reported up to Mr Jones, who is white. Accordingly the claimant is correct there was a majority of white managers within her immediate team but there was also a considerable proportion of non-white managers. They all worked in close proximity to one another as described above. Further, managers had a specific cross team remit and employees were encouraged to approach any manager with their issues. It is correct however that within the wider team managed by Mr Jones there were no other black managers.

128. As to whether this led to a better rapport between management and white employees compared to black employees, no credible evidence was put forward by the claimant to support this assertion and there is nothing in the documentary evidence to support it either. Indeed, in her own comments in her Employee Performance Plan for 2012/13 (signed by her on 23 October 2012) the claimant wrote:

> "I feel that I have been able to adapt well in the different style and pace of working in Specialist Social Work Team with invaluable support from my Line Manager and members of the team.… Overall I feel that I have settled well in the team…"

129. Also in her letter of resignation addressed Ms Jackson dated 1 October 2014, she took the opportunity to thank her and the team for their support over the years. Ms Jackson gave compelling evidence denying that she had a better rapport with white employees.

130. We also heard evidence from Mr Huagie and he confirmed that it was "absolutely not the case" that managers had a better rapport with white colleagues.

131. Taking all this evidence into account, we find that it was not the case that there was a better rapport between management and white employees than with black employees.

132. As for the respondent's approach to internal promotions, usually all eligible employees were sent by email the same information about vacant post and reminders that a deadline was approaching. If an employee was interested in a particular post it was for them to raise this with their line manager. Mr Huagie gave evidence that a black African female Level 1 social worker was assisted by Mr Jones on her application for promotion. She remains employed by the respondent and is now an Assistant Team Manager. He also confirmed that he personally was assisted by Mr Jones in his application for progression from social worker to Assistant Team Manager and now Team Manager.

133. The claimant gave as an example of the practice about which she complains an email dated 8 April 2013 from Mr Jones to five employees, three of whom were black including the claimant, advising them of an acting Assistant Team Manager vacancy in SSWT. The email describes the role and asks that they let him know by a date if they are interested. The email also states:

> "Please ensure that you discuss this in detail with your line manager before you respond to this email."

134. Mr Jones's explanation was that this was to make sure that the recipients had appropriate support rather than a precondition of applying. It gave an opportunity to the line manager to give advice to the employee and that employees would usually take that advice. He said the reason the statement was underlined was because it was a good thing to do not because unless the manager had spoken to an employee they should not apply. He said that there was "no reality in that whatsoever".

135. Ms J Lane, who is white, applied for and was appointed to the role in question. The claimant said that she and the two other black workers were completely overlooked for the role. Specifically it was put to Mr Jones that Ms R Sarkaria, who is Asian, spoke to him about the role but he dissuaded her from applying as she had no experience of learning disability and that this was an excuse. Mr Jones denied this and said that the role in question had nothing to do with learning disability and therefore this would not have happened.

136. Ms Jackson's evidence was that she spoke to Ms Sarkaria at the time who confirmed that the time was not right for her to take on a managerial role and therefore she did not apply. Further Ms Asampong, the other black employee, was close to retirement and was therefore not interested. Ms Jackson also said that the claimant did not approach her about the role.

137. The role later became permanent and the advert was emailed by Mr Jones on 15 August 2014 to a number of employees including the claimant. On occasion the advert stated:

> "For an informal discussion, please call Griff Jones"

138. The claimant, together with other employees, was sent a copy of the job description and person specification on 20 August as well as a reminder of the deadline on 26 August. The claimant did not apply for the role. Ms Lane did and was appointed.

139. Also in August 2014 Ms Jackson raised another available role in CMH with the claimant during a supervision but the claimant confirmed she was not interested in applying for it.

140. The claimant also said that another white employee, Mr Gary French, was treated favourably in comparison to her. It was clear from Ms Northover's evidence that Mr French had previously and expressly raised with his immediate line manager that he was interested in promotion. He did apply for an Assistant Team Manager role following a discussion with Ms Northover but was in fact unsuccessful.

141. Having reviewed the above evidence, we find that there was no practice by the respondent's managers of approaching individuals whom they considered to be suitable for particular roles and inviting them to apply and that this disadvantaged black employees.

142. <u>Unfair dismissal</u>:

143. Following the meeting on 11 September, the claimant decided to resign. She spoke to both a colleague and Ms Miller, Safeguarding Advisor who was also the Deputy Chairman of the respondent's race equality networks. The claimant's evidence was that she had spoken to Ms Miller previously about her concerns regarding her treatment. This evidence was not corroborated (the claimant did not ask Ms Miller to give evidence) although not challenged either and therefore is accepted.

144. The claimant confirmed in her evidence that she could have raised a grievance before she resigned and would have been supported by Ms Miller had she done so but chose not to as she would have found it very difficult to be in employment whilst pursuing a grievance because of a fear of repercussions. She originally intended to resign immediately after the meeting but Ms Miller advised her to wait to the end of the month in order to make the calculation of her outstanding entitlements easier as well as

giving her time to close her cases. The claimant also took advice from HR before her resignation who confirmed that she could raise a grievance up to 3 months after her employment ended.

145. She therefore gave her letter of resignation to Ms Jackson, cc Mr Jones, on 1 October. The letter said:

> "I am writing to confirm my intention to terminate my contract with Royal Borough of Greenwich and I wish to give one month's notice from 1st October 2014.
>
> My last day of service will be on 31st October 2014.
>
> I would like to take this opportunity of thanking you and the team for your support over the years.
>
> Kind regards
>
> Claire Atino."

146. Ms Jackson expressed surprise and asked the claimant about her future plans. The claimant's evidence was that Ms Jackson also said she thought the claimant had not thought it through properly to which she replied that she felt she had no further option.

147. At the team meeting on 15 October the claimant informed the team that she was leaving at the end of the month. The claimant's case is that she had to make this announcement as there had been no prior notification sent to staff as was the normal practice and compared herself to Mr Boyles. It was also his last team meeting and staff had been asked to bring contributions for a tea party after the meeting to mark his departure. The claimant says that this is a further example of how she was undervalued and treated differently to staff because of her colour.

148. The respondent's case was that the claimant and Mr Boyles were different as he was a popular manager who had worked tirelessly on various projects and was emigrating rather than just leaving his job. This was not challenged and accordingly we find that the difference in treatment was not because of colour and does not offer support to the claimant's other allegations.

149. The claimant submitted a grievance to the respondent in January 2015. The respondent failed to acknowledge this in a timely fashion and eventually in May 2015 confirmed to the claimant that they intended to take no action with regard to the grievance. We observe that it is unfortunate that they adopted this approach as perhaps had they considered the grievance these proceedings may have been avoided.

Conclusions

150. <u>Breach of Contract – NRPF role:</u>

151. The claimant's contract of employment was unilaterally varied by the respondent in 2010 when it reorganised and allocated her to the SSWT.

This therefore amounted to a breach of her contract and regrettably this was not clearly stated to her at the time. The claimant clearly accepted that breach however by continuing to work for the respondent thereafter for some years in SSWT without formal objection. She cannot now claim in respect of that breach. In any event, no pecuniary loss was suffered by the claimant as she was paid the same package in SSWT as she would have been if allocated solely to NRPF.

152. Time points

153. Even when taking into account the impact of the ACAS early conciliation procedure certain of the claims of discrimination were brought out of time. Our conclusion is that allegations 1-5, 6, 7, 10-14, 16 & 17 all amount to discrete acts that occurred more than 3 months before submission of the claimant's claim form. No significant evidence was given by the claimant as to why she submitted her claim form when she did and why, if she was out of time, the Tribunal should exercise its discretion in her favour. Accordingly the claims based on those allegations fail. If we are wrong about that, however, we have considered these allegations on their merits below.

154. Allegations 8, 9, 15 & 18 are all however capable of being continuous acts that continued to the end of the claimant's employment and claims based on them and the claim of indirect discrimination were therefore brought in time and are considered below.

155. Direct race discrimination & Harassment:

156. Allegations 1-5: we find that the burden of proof does pass to the respondent given that there was a reorganisation following which the claimant was relocated in breach of her contract when compared to either Ms McCredy or a relevant hypothetical comparator. Given however our findings that the claimant was not treated any differently to other employees in respect of the restructuring, that Ms Jackson addressed the claimant's concerns with her shortly afterwards as best she could and where she did not this was not because of the claimant's race, that Mr Jones did not wave her off and that his decisions regarding resourcing were not based on colour, we conclude that this did not amount to either direct race discrimination or harassment.

157. Allegation 6: we find that the burden of proof does not pass to the respondent given our findings of fact and specifically that the person who was engaged to do the NRPF work was also black and therefore cannot find that Mr Jones's decision not to appoint the claimant was tainted by discrimination based on colour. We conclude that this did not amount to either direct race discrimination or harassment.

158. Allegation 7: we find that the burden of proof does pass to the respondent given that the respondent decided to allocate only white carers to Mrs R. However we find that this was not direct race discrimination. Although clearly on the facts it was because the claimant was black that

Mr R requested alternative carers, the decision made by the respondent was because of other very relevant matters. As to whether it amounted to harassment, we find that for the same reasons as stated above when making this decision the respondent did not have the purpose of violating the claimant's dignity etc but we accept that the claimant may well have felt humiliated. We have to consider whether it was reasonable for the claimant to feel humiliated. In all the circumstances we do not so conclude. The claimant was involved in the decision-making process, understood the delicate balancing exercise that had to be undertaken and did not make any complaint at the time. We conclude therefore that this did not amount to harassment.

159. Allegation 8: we find that the burden of proof does not pass to the respondent given our findings that neither Mr Jones nor Ms Jackson treated the claimant as alleged. We conclude that this did not amount to either direct race discrimination or harassment.

160. Allegation 9: we find that the burden of proof does not pass to the respondent given our finding that Ms Jackson gave appropriate and reasonable support to the claimant in respect of her training and professional development. We conclude that this did not amount to either direct race discrimination or harassment.

161. Allegation 10: we find that the burden of proof does pass to the respondent given that Ms Jackson moved the case from the claimant to Ms Nesbit. However given our finding that there were valid reasons for Ms Jackson's decisions on how to manage this case and that these had nothing to do with the claimant's colour we conclude that this did not amount to either direct race discrimination or harassment.

162. Allegation 12: we find that the burden of proof does pass to the respondent given that there were arguably some differences in treatment by Ms Jackson of the claimant when compared to Mr MacPherson. Given our findings however that Ms Jackson's decisions were valid managerial ones made with no reference to the claimant's colour. As for the allegation concerning time for preparation of the report for the legal department, we find that the burden of proof does not pass. Accordingly we conclude that this did not amount to either direct race discrimination or harassment.

163. Allegation 13: we find that the burden of proof does not pass to the respondent given our findings as to what happened during the meeting between Ms Jackson and the claimant. We conclude that this did not amount to either direct race discrimination or harassment.

164. Allegation 14: we find that the burden of proof does pass to the respondent given that Ms Jackson adopted a different approach to that first suggested by Ms Wybourne however given our findings as to the reasons why Ms Jackson made the decision she did we do not find it to have been direct race discrimination. As to whether it amounted to harassment, we find that for the same reasons as stated above the respondent did not have the purpose of violating the claimant's dignity etc

but we accept that the claimant may well have felt humiliated. We have to consider whether it was reasonable for the claimant to feel humiliated. In all the circumstances we do not so conclude. The claimant was advised by Ms Jackson why she believed a letter would serve no purpose and would have understood the context. Again she made no complaint at the time. We conclude therefore that this did not amount to harassment.

165. Allegation 15: we find that the burden of proof does not pass to the respondent given our findings of fact that she was treated no differently to her comparators. We conclude that this did not amount to either direct race discrimination or harassment.

166. Allegations 16 & 17: we find that the burden of proof does not pass to the respondent given our findings that it was a reasonable management decision to ask the claimant to attend a meeting to discuss their concerns and that the behaviour of Mr Jones and Ms Jackson during this meeting was reasonable and the claimant's race was irrelevant. We conclude that this did not amount to either direct race discrimination or harassment.

167. Allegation 18: we find that the burden of proof does not pass to the respondent given our finding that Ms Jackson's actions with respect to monitoring the claimant were reasonable and not referable to her race. We conclude that this did not amount to either direct race discrimination or harassment.

168. In considering all of the above allegations we have reminded ourselves how difficult it can be for a claimant to find evidence to support allegations of discrimination. On these facts however this claimant fell well short of the standard needed.

169. <u>Indirect race discrimination & allegation 11 direct race discrimination/harassment:</u>

170. In respect of the indirect discrimination claim we find that the burden of proof does not pass to the respondent given our findings that there was no better rapport between management and white employees and that there was no practice of managers approaching individuals whom they considered suitable for promotion.

171. As far as the allegation of direct discrimination or harassment arising out of the recruitment process for the acting Assistant Team Manager role in 2013 is concerned, we find that there is no basis for concluding race played any part in the respondent's process or decision making process.

172. It was reasonable for the respondent, and is common practice in industry, to encourage employees to discuss possible promotions with their line manager before applying. This does not preclude them from later applying. The claimant and other black employees were given every opportunity to apply for this post and chose not to.

173. Unfair dismissal:

174. Given our findings above in relation to the claims of discrimination it follows that we do not find that the events complained of by the claimant in that regard can amount to a breach of the implied term of mutual trust and confidence as we conclude that either they did not happen or there were reasonable, non-discriminatory reasons for them. Further, as far as the meeting on 11 September 2014 is concerned, we conclude that there was no failure to follow the disciplinary procedure as the meeting was outwith that process. It was normal day to day management. Nothing about the circumstances of that meeting amounted to a breach of the implied term. In particular she did not require prior notice of its purpose nor was there a need for the respondent to investigate the allegations beforehand. Indeed part of the purpose of the meeting was to investigate.

175. Accordingly, there was no breach of contact by the respondent and accordingly the claimant was not entitled to resign in response and she was not constructively dismissed.

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Employment Judge K Andrews
Date: 15 July 2016

Appendix A