EMPLOYMENT TRIBUNALS

Claimant: Miss M Matthews

Respondent: A1F1 Limited

Heard at: **London South Employment Tribunal**

On: **25-26 September 2019 & 4 October 2019 (in chambers)**

Before: **Employment Judge Ferguson**

Members: **Mr N Aziz**
Ms J Bird

Representation
Claimant: Mr A Bachu (Free Representation Unit)
Respondent: Ms A Clay (Consultant)

RESERVED JUDGMENT

It is the unanimous judgment of the Tribunal that:

1. The Respondent subjected the Claimant to unlawful harassment related to race.

2. The Respondent shall pay the Claimant compensation for injury to feelings in the sum of £10,927.12 (£10,000 plus interest of £927.12).

REASONS

INTRODUCTION

1. By a claim form presented on 8 November 2018, following a period of early conciliation from 13 September to 10 October 2018, the Claimant brought a complaint of harassment related to race against the Respondent. The Respondent defended the claim.

2. The Claimant worked as a scan assistant alongside a sonographer, Gill Scott. The Claimant says that there were two occasions, on 28 and 30 July 2018, when Ms Scott made comments that amounted to harassment related to race. She says the first comments were along the lines of "Why do black women think it's acceptable to expose themselves, this is the second one of them who has done this in this week alone". It is alleged that on the second occasion Ms Scott sought to justify the earlier comments. The precise alleged comments are set out in a list of issues that was agreed at a preliminary hearing on 10 May 2019.

3. In its Amended Grounds of Resistance the Respondent did not dispute that the comments were made, but denied that they constituted harassment. The Respondent now disputes the exact language and maintains that the conduct did not amount to harassment related to race.

4. As for remedy, the Claimant claims compensation for injury to feelings and seeks recommendations.

5. We heard evidence from the Claimant and, on behalf of the Respondent, from Gill Scott, Louise Buck (a Senior Clinic Assistant) and Farrakh Ilyas (a Director and owner of the Respondent company).

FACTS

6. The Respondent is a private healthcare company, trading as Ultrasound Direct. It provides ultrasound scans and blood tests to pregnant women. It has a number of clinics in London and employs approximately 15 people. It is owned and run by Farrakh Ilyas and Adeeba Ilyas, a married couple.

7. The Claimant began working for the Respondent on 3 April 2018 as a clinic assistant. Her role included meeting and greeting patients and preparing the scan rooms before and after appointments.

8. The Claimant describes her race/ ethnic origin as black. She was born in Jamaica.

9. On Saturday 28 July 2018 the Claimant was working alongside Gill Scott, a sonographer also employed by the Respondent. Ms Scott is a trained midwife who has worked as a midwife and/or sonographer, both in the NHS and privately, since 2000. She joined the Respondent in November 2017 as a Lead Sonographer. She is white.

10. It is not in dispute that on 28 July 2018 a woman, who was black, attended the Respondent's Eltham clinic for an abdominal gender scan. She was around 28 weeks' pregnant and attended with her partner. Ms Scott carried out the scan alone in the scan room with the patient and her partner. Ms Scott's evidence is that when the patient lifted her dress for the scan she was not wearing underwear. Ms Scott gave her some "couch roll" (tissue paper) to cover herself but she kept dropping it so her genitals were exposed during much of the appointment. After the patient left, the Claimant entered the scan room. The Claimant's and Ms Scott's accounts of what was said differ.

11. The Claimant's account is as follows. Ms Scott said to the Claimant, "Why do black women think it's acceptable to expose themselves", and said this was the

second one this week alone. The Claimant was taken aback, so asked what she meant. Ms Scott explained the patient had lifted her dress up and exposed herself. The Claimant said she did not believe black women think it's acceptable to expose themselves. Ms Scott responded angrily, saying in her experience it was true, and "this is the second one this week alone and it's always that 'one particular woman'". The Claimant asked what she meant by that and Ms Scott said it's "always African women, specifically those from Nigeria", that it was not the first time and every time it had happened it had always been black women. The Claimant decided to take the bin out to escape from the room.

12. Ms Scott's account is as follows. She said that she knew from chatting to the Claimant previously that she came to the UK from Jamaica as a child and that she had spent some time doing voluntary work in Africa – she believed in Ethiopia and Kenya. She said that when the patient arrived on 28 July she had a long dress on and Ms Scott commented that she liked it. The patient said it was a traditional Nigerian pattern. Ms Scott said when the patient lay on the couch she pulled her dress up and her legs were open. In her witness statement Ms Scott describes being shocked and "taken aback". She said the guidance given to women when they book is to wear two-piece underwear with the abdomen exposed. She said she felt "violated" and "extremely upset". In her oral evidence Ms Scott said that the main reason she felt that way was because the patient's partner was also in the room and she felt he was watching her for her reaction. After the appointment the Claimant came in and asked Ms Scott if she was ok because she was "visibly upset". Ms Scott said "No I'm not, I'm really upset actually". She went on to explain what had happened and that it was the second time that week. She then said words to the effect of, "Why do you think some African women think it's ok to expose themselves?". She felt she could ask the Claimant the question because she knew the Claimant had travelled to Africa and she had better knowledge of African culture. The Claimant said it was probably a cultural thing. She gave Ms Scott a comforting smile and told her not to worry about it. She did not indicate that she was upset with the question.

13. It is not in dispute that the Claimant telephoned Mrs Ilyas the following day to report the incident. The Claimant was due to work with Ms Scott again on Monday 30 July. Mr and Mrs Ilyas were on annual leave at the time. Mrs Ilyas suggested that the Claimant and Ms Scott meet half an hour before the shift was due to start on 30 July to "clear the air". The Claimant said she did not feel comfortable doing the shift with Ms Scott. Mrs Ilyas suggested that the Claimant should decide if she was happy to do the shift after the conversation with Ms Scott, and if not Louise Buck, a Senior Clinic Assistant, would cover it. The Claimant agreed to this.

14. When the Claimant arrived at the clinic on 30 July Ms Scott and Ms Buck were already there. The Claimant and Ms Scott had a conversation in the reception area. Ms Buck was sitting at the reception desk, in the same room but a few metres away, and took no part in the conversation. There are, again, differing accounts of what was said.

15. The Claimant's account is as follows. Ms Scott said Mrs Ilyas had told her what the Claimant had said, and Ms Scott said, "I stand by what I said". She said that in her experience that had always been the case and last week alone there were two of that "one woman". She did not apologise. The Claimant asked what

she meant and Ms Scott responded "black women", and "Nigerian women". The Claimant asked Ms Scott why she felt it was ok to say this to her and Ms Scott said because the Claimant had travelled to Africa. The Claimant tried to explain that black women do not think it is acceptable to expose themselves. She said she understood Ms Scott was upset the patient had exposed her vaginal area, but asked why she had brought the colour of her skin into it. Ms Scott repeated that it was always that "one woman" and that in her experience they always do this. The conversation continued with a dispute about when and whether it is inappropriate for a woman to "expose herself" during a scan, and about why the Claimant had gone to Mrs Ilyas instead of discussing it with Ms Scott. It ended with the Claimant saying she felt uncomfortable working with Ms Scott and Ms Scott saying she felt the same.

16. Ms Scott's account is as follows. She says before the Claimant arrived she and Ms Buck talked about their weekends. There was no discussion about the meeting that was about to take place. When the Claimant arrived she gestured to Ms Scott to go into the scan room for a private conversation. Ms Scott was not comfortable with this so gestured for the Claimant to sit next to her on the couch in the waiting area instead, which she did. It started as a friendly discussion, and Ms Scott said she was sorry to hear the Claimant was upset and asked her to tell Ms Scott what had upset her. The Claimant then became extremely agitated and aggressive towards Ms Scott, accusing her of stereotyping black women. The Claimant kept trying to put words into Ms Scott's mouth.

17. In the Tribunal bundle there is a document described as "minutes" of the meeting on 30 July between the Claimant and Ms Scott, taken by Ms Buck. The Claimant had not seen these, or been aware of their existence, until they appeared in a hard copy of the bundle provided to her around 6 weeks before the hearing. The Respondent's Amended Grounds of Resistance asserted that the discussion was not minuted. The minutes run to three closely-typed pages and are in the form of a verbatim record of the conversation, akin to minutes typically taken by HR professionals in internal meetings. Ms Scott's evidence is that they are a true reflection of the meeting. The Claimant disputes the language and the way in which some exchanges have been recorded, but accepts much of it as accurate. It also includes observations from Ms Buck about body language which the Claimant says misrepresent what happened.

18. As to the provenance of the document, Ms Buck's witness statement simply says she had witnessed first-hand the events in the clinic on 30 July and "I made a note of my observations of how the meeting went". She was asked about the document in cross-examination and questions from the Tribunal. Her evidence was that Mrs Ilyas had asked her to swap shifts to attend the Eltham clinic on 30 July. She did not think anything of it. Mrs Ilyas did not tell her about the issue the Claimant had raised and she did not know that the Claimant was going to be attending the clinic. When Ms Buck arrived she and Ms Scott talked about their weekends and Ms Scott did not say anything about the meeting that was about to happen. When the Claimant arrived Ms Buck thought that she might have been there to do a telephone training session. Ms Buck had already completed all her normal preparation work for the clinic, so while the Claimant and Ms Scott were having the discussion she was just sitting at the reception desk. She was not using the computer or taking any notes. She played no part and had no role in the discussion, which lasted about 30 minutes. The following

day Mrs Ilyas called her and asked what she had observed the previous day. She told Mrs Ilyas it was uncomfortable to witness. About a week later Mrs Ilyas telephoned her again and asked her to write a note of the meeting. She did so either the same day or the following day. When asked how she was able to produce a verbatim note a week later, when she had not had any role in the meeting and had not known she was going to be asked to produce a note, Ms Buck said it was "difficult to forget" and that the notes had been "relatively easy to write up". She said she had no experience of taking minutes of this kind in the past. She said she emailed them to Mrs Ilyas as soon as she had produced them.

19. There was a discussion at the end of the first day of the hearing about why the email from Ms Buck to Mrs Ilyas, attaching the minutes, had not been disclosed. The Respondent agreed to make searches overnight for that email and to try to obtain the metadata of the minutes. At the start of the second day the Respondent produced an email exchange between Mrs Ilyas and Ms Buck on 11 and 12 October 2018 in which Mrs Ilyas asked Ms Buck to "kindly forward a copy of the minutes from the meeting between [Ms Scott and the Claimant] at Eltham on Monday 30th July 2018" and Ms Buck sent them the following day. The Respondent also produced an email of 12 October 2018 in which Mrs Ilyas sent the same document, as well as notes of the grievance appeal meeting, to Mrs Russell of HR4UK, the Respondent's HR consultants. When questioned further Ms Buck said she had created the minutes on her personal computer, but the hard drive had broken two or three months ago so she could not access the original document. She at first suggested the problem with her laptop also meant she could not find the emails, but then accepted that she had used an internet-based account. She said she had looked in her sent items and although she thought she had sent it to Mrs Ilyas about a week after the meeting she "must have got distracted", and it was never sent. When she received the email in October from Mrs Ilyas, she sent the document then. She said that after the request in early August, and the failed attempt to send the minutes, Mrs Ilyas had not followed it up with her or mentioned the minutes again until the October email.

20. Mrs Ilyas did not give evidence to the Tribunal. It was asserted by the Claimant's representative on a number of occasions that she was present throughout the hearing and this was not disputed by the Respondent.

21. We found Ms Buck's account of the provenance of the document to be entirely implausible. We consider it so unlikely that she could have produced a verbatim note of the conversation one week later, when she had no idea she was going to be asked to do so, that her account cannot be true. We also take into account the inconsistencies in her evidence about when the minutes were sent to Mrs Ilyas, and again we find it extremely unlikely that if Mrs Ilyas had requested the minutes in early August and had not received them she would not have made any further request until two months later. Mr Ilyas accepted in his evidence that at the time of the grievance appeal hearing, which took place on 10 October 2018, he knew that the minutes were in existence.

22. We consider the only plausible explanation is that Ms Buck took a reasonably full note of what was being said at the time, and that she had been briefed by Mrs Ilyas to do so. We also find that Ms Scott must have known that Ms Buck was going to act as a witness or note-taker, which is why she insisted on the

meeting taking place in the reception area. The minutes record Ms Scott saying "L [Ms Buck] is present to listen to what has to be said." Ms Scott and Ms Buck must have discussed what was about to happen before the Claimant arrived. We find that Ms Buck gave untruthful evidence about her role and how the document was created, and we consider it surprising, to say the least, that Mrs Ilyas chose not to give evidence. In all the circumstances we infer that the notes were taken with the intention of defending the Respondent against any potential complaint or proceedings by the Claimant. Ms Buck was not an impartial observer. We also consider it possible that there was input from someone else, which may explain the professional format. We are doubtful that Ms Buck's evidence about her laptop was true.

23. We therefore consider the note to be unreliable, designed to portray the exchange favourably to Ms Scott and against the Claimant. We note that despite this, in some respects it supports the Claimant's account. In particular it records the following exchange (M is the Claimant and G is Ms Scott):

> "M: You asked a question on Saturday about the lady you saw who exposed herself to you in the scan room. You asked me 'why do some black women feel it's OK to expose themselves to me?' and I asked you 'What's happened?'
> G: I said 'that woman I've just scanned, wasn't wearing any underwear and pulled her dress right up to her chest and exposed herself to me and I'm shocked.
> M: I said 'not all black women do that'.
> G: And I said to you, 'You're absolutely right, of course I know, not all black women do that, but this has happened to me several times in the past and this is the second time this has happened to me this week and I am totally shocked and upset by it. This seems to be a specific person and they all seem to be from Nigeria? I asked you the question – 'Why is that?' You said, 'maybe it's a cultural thing' and I asked 'really?'."

24. Ms Scott emailed Mrs Ilyas after the meeting to say she was "left extremely upset by [the Claimant's] comments of me stereotyping black women, which I feel is wholly untrue". She also suggested it may have been a "tit for tat" situation after she had raised an issue with Mrs Ilyas previously about the clinic being left in a mess after a shift the Claimant did.

25. In her oral evidence to the Tribunal Ms Scott accepted she had said "This seems to be a specific person and they all seem to be from Nigeria". She said it had happened "a few times before", although it was not exactly the same situation, and "the people who have done that seem to be from that area".

26. We make the following findings about the discussions on 28 and 30 July:

    26.1. We note that the principal dispute on the language is whether Ms Scott said "black" or "African" or "some African". Ultimately there may be little difference, in that they all arguably involve stereotyping on racial grounds, but we consider it important to make a finding about precisely what was said. There is also a dispute about whether Ms Scott apologised on 30 July.

    26.2. In its Amended Grounds of Resistance the Respondent did not deny the comments that were alleged by the Claimant, but denied that the conduct

was unwanted because the comments were "made as an observation of fact". The dispute about the language has come up only in the witness evidence. The Claimant did not argue that the Respondent was precluded from disputing the precise words that were used.

26.3. We find that Ms Scott did not give truthful evidence about what happened immediately prior to the meeting on 30 July. We do not accept her evidence that she did not discuss the meeting with Ms Buck in advance. We also consider she has exaggerated the incident with the patient on 28 July and the impact of it on her. We note there was no mention of patient's partner until her oral evidence. She is a trained midwife of almost 20 years' experience. Even if it was unexpected that the patient was not wearing underwear, we find it surprising that she would have such an extreme reaction to a woman not covering herself in those circumstances. The language of being "violated" and being the "the injured party" is far-fetched.

26.4. We consider the Claimant was a credible witness. She has given a consistent account of the events and acted very promptly in complaining. The only oddity in her evidence was that she wrote an effusive and friendly resignation letter (see below), but we do not consider it affects her credibility as to the events of 28 and 30 July.

26.5. According to the minutes of 30 July meeting, Ms Scott did not take issue with the Claimant reporting her saying "why do some black women feel it's ok…"

26.6. Taking all of the above into account, on the balance of probabilities we find that the Claimant's accounts of the two discussions are accurate. In particular, Ms Scott referred to "black women" and she did not apologise on 30 July.

27. The Respondent suggested for first time in its witness evidence that the Claimant had made these allegations in retaliation for some matters that Ms Scott had raised with her, and/or because she knew she was likely to be dismissed. Mr Ilyas's evidence was that they had discovered unauthorised internet use by the Claimant and intended to dismiss her on their return from holiday. None of these matters was put to the Claimant in cross-examination, even after several reminders from the Tribunal that it would not be able to make findings to that effect without the allegations having been put. In view of our concerns about the credibility of the Respondents' witnesses generally, we consider this was simply an attempt to discredit the Claimant and in the circumstances we do not accept that these matters have any relevance.

28. There was a dispute about whether Mrs Ilyas contacted the Claimant after the meeting on 30 July, but we do not consider it necessary to resolve this issue.

29. On 31 July the Claimant submitted a formal grievance complaining about Ms Scott's comments. In the letter the Claimant said:

> "I consider myself to be a fair and reasonable person. Therefore I know that we are all prone to, at some point or another. To fall victim to human error. For this reason I was more than willing to give Gill the benefit of doubt. However Gill was not remorseful for what she said, but instead

> justified what she said and stated that she was within her right to make the comments she made based on her experiences."

30. The Claimant also requested not to be put on a shift with Ms Scott. It is not in dispute that she was not put on a shift with Ms Scott for the rest of her employment.

31. Mrs Ilyas forwarded the Claimant's grievance to Louise Stringer, the then HR manager, on 3 August. Ms Stringer emailed the Claimant on 13 August to arrange a telephone call to discuss the grievance. The call took place on 14 August 2018. Mr Ilyas's evidence was that some time after this call Ms Stringer spoke to Ms Scott about the grievance. No record of that conversation has been produced and Ms Scott did not mention it in her evidence. On 9 September Ms Stringer wrote to the Claimant as follows:

> "I would like to thank you for your patience whilst I have investigated the grievance and wish to apologise for the delay in you receiving the outcome. I can confirm this was mainly due to the investigation being conducted during the summer holiday period and not everyone was available to speak to.
>
> The purpose of this letter is to confirm the outcome of my investigation into the allegations you raised.
>
> The allegations which you raised were relating to the conduct of another Ultrasound Direct colleague on the 28th July 2018 regarding comments made that you found to be offensive. You have requested in your grievance letter that this be dealt with formally and that you no longer work alongside this colleague.
>
> Having heard the evidence presented and having reviewed your grievance, my findings and recommendations are set out below:
>
> After investigation, I understand that you felt aggrieved and upset by the comments made to you, however, I can find no evidence to suggest that these comments were intended to be offensive or hurtful or to make you feel uncomfortable.
>
> Although the comments were not intended to cause offence, in light of this incident and also the previous incident mentioned, I would recommend that if you are both in agreement you should meet with a manager present to resolve these issues so you can work together in the future. I would also recommend that until such a meeting takes place that you are not placed on shift together."

32. The Claimant submitted an appeal on 14 September 2018. She alleged that Ms Scott's comments amounted to harassment related to race. She said the grievance outcome implied that the company deemed the comments to be acceptable because they were not intended to cause offence.

33. A grievance appeal hearing was arranged on 10 October 2018, chaired by Mr Ilyas. His evidence was that the purpose of the appeal was for him to consider any further evidence the Claimant wanted to put forward. His evidence about

whether there were any notes of Ms Stringer's conversation with Ms Scott or whether he considered them was not clear. He repeated on a number of occasions that if the Claimant had produced "new evidence" he would have considered it. He did not conduct any form of investigation himself. He said he knew Ms Buck had produced a note of the 30 July meeting, but he had not seen it and did not consider it. He said he did not reach any conclusions about what words had been used because he "wasn't in the room at the time". As noted above, Mr Ilyas's evidence was that he was intending to dismiss the Claimant on return from holiday, but when he received the grievance he decided he did not want to "incite the matter by adding termination". He said dealing with grievances was new to the company and they were learning.

34. On 17 October 2018 Mr Ilyas wrote to the Claimant informing her that he had decided to uphold the original decision. He said, "we can find no evidence to suggest that these comments were intended to be offensive or hurtful or to make you feel uncomfortable". He listed a number of policies, including an equal opportunities policy, which were said to be available in the online handbook.

35. The Claimant's evidence is that the situation took a toll on her "physically, mentally and emotionally". She visited her GP on 21 September 2018, when the following history was noted: "having some problems at workplace, had some sleeping T in past; prob at work can't nap; going through ACAS for grievance with company and colleagues, stressful; volunteers on helpline; is having supervision for this and thus some counselling for it; working in private USS clinic". The problem is noted as Depression and she was prescribed Diazepam.

36. The reference to volunteering on a helpline relates to the Claimant's voluntary work for a rape crisis helpline, which she had been doing since January 2017. She volunteered there on five occasions, for up to four hours at a time, while employed by the Respondent.

37. The Claimant attended her GP again on 4 October. The notes record "stressed with issues at work" and "feels anxious". She described feeling feint and light-headed. She was prescribed Amitriptaline.

38. On 10 October 2018, the day of the appeal hearing, on her way home the Claimant suffered a panic attack. She attended A&E and the hospital records refer to "stress at work had a hearing today". Her symptoms included chest pain and she was diagnosed with anxiety disorder. The notes also mention costochondritis (inflammation of the chest wall). She was signed off sick from the following day and never returned to work.

39. On 12 October the Claimant attended her GP again and the following was noted: "Anxious about thought going back to work. Tribunal for discrim and harassment against current employer. Not in union. Will go to CAB for advice. Feels may never feel able to return to that workplace."

40. There were three more attendances, on 19 October, 31 October and 5 November, noting "stress at work".

41. On 8 November 2018 the Claimant submitted a letter of resignation. It states:

> "It is with deep regret that I write to tender my resignation from my role as Clinic Assistant, with Ultrasound Direct London.
>
> …
>
> I have enjoyed the role very much, what a tremendous and amazing experience it has been to be a part of the first few weeks or months of a mum to be's journey into motherhood. To be a part of that joy, happiness and excitement was fulfilling to the soul and made the role that much more rewarding. I am beyond grateful and would like to thank you for the opportunity given to work for your company.
>
> I really and truly wish you and the company the very best of success. And the best of luck in all future endeavours."

42. The Claimant attended her GP again on 28 November 2018. The notes record: "left job, new one in 2/52 working in rape crisis team leader will get reg supervision and counselling as part of it, physical and mental symp improving ++"

43. A report from the Claimant's GP provided for these proceedings notes that the Claimant's symptoms of light headedness and tension headaches were most likely to be panic attacks triggered from stress at work. The chest pain she experienced was most likely triggered by a viral infection and "potentially exacerbated by stress". He notes she was reported as feeling anxious at the time. He also notes a previous history of depression.

44. The Claimant accepted that she has a history of depression, but said in her oral evidence that the last time she attended the GP for depression was many years before these incidents.

THE LAW

45. Harassment is defined in section 26 of the Equality Act 2010 as follows:

> (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.

CONCLUSIONS

46. In accordance with the guidance of Underhill LJ in Pemberton v Inwood [2018] ICR 1291 we address the three elements of harassment in turn: (1) unwanted conduct, (2) having the proscribed purpose or effect, and (3) related to a relevant protected characteristic.

47. We have considered Ms Scott's conduct on 28 and 30 July 2018 cumulatively because it is clear from the Claimant's grievance that she was willing to give Ms Scott the "benefit of the doubt" after the first incident, and it was only after Ms Scott's conduct on the second occasion that she insisted on not working alongside her again.

48. We are satisfied that the comments, when taken together, amounted to unwanted conduct. The comments on 28 July were uninvited and unwelcome, and although the Claimant may not have clearly expressed this on the first occasion, by the time of the meeting on 30 July she had made it clear to Ms Scott that she considered the comments offensive and explained why. Ms Scott then sought to justify what she had said on the basis that black women, and Nigerian women in particular, "always" expose themselves. The Claimant continued to express strong objection and the conduct was clearly unwanted.

49. It was not suggested that the conduct had the *purpose* of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her. We do not make any such finding.

50. As to whether it had the proscribed effect, we have taken into account both the Claimant's perception and whether it was reasonable for the conduct to have that effect. Considering the two incidents together, we find that the comments were derogatory and stereotyped on the basis of skin colour and/or ethnic origin and/or nationality. They were offensive, particularly to the Claimant as a black woman. The Claimant's evidence was that she took the comments to imply that such women are "uncivilised, indecent and inconsiderate". She said that "As a black woman, such comments were degrading". Ms Scott's explanation about asking the Claimant the question because she had travelled to Africa does nothing to lessen the prejudicial nature of the comments.

51. If Ms Scott had apologised on 30 July and recognised that the comment was not acceptable, we doubt that the conduct would have had the effect that it did on the Claimant, and we may have concluded that it would not be reasonable for it to have had the effect that it did. We have found, however, that she did not apologise or retract the comment. On the contrary, she attempted to justify what she had said on the basis that it was true. It is understandable that she felt uncomfortable working with Ms Scott again the circumstances. We accept that that conduct had the effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant, and that it was reasonable for it to have had that effect.

52. Finally, the conduct was obviously related to race.

REMEDY

53. We note that the applicable bands for awards of injury to feelings are those in the first addendum to the Presidential Guidance, published on 23 March 2018, which updated the Vento bands as follows:

> "In respect of claims presented on or after 6 April 2018, the Vento bands shall be as follows: a lower band of £900 to £8,600 (less serious cases); a middle band of £8,600 to £25,700 (cases that do not merit an award in the upper band); and an upper band of £25,700 to £42,900 (the most serious cases), with the most exceptional cases capable of exceeding £42,900."

54. In assessing the appropriate level of compensation for injury to feelings, we have taken account of the following matters:

54.1. This was effectively a one-off incident, although it is relevant that Ms Scott never retracted the comment and the Respondent never acknowledged it to be wrong.

54.2. Although it was offensive, it was not the most serious type of racially offensive comment that could be made. It was also not expressly about the Claimant.

54.3. The Claimant raised her objections promptly and pursued the matter as far as she could using the grievance process.

54.4. The grievance process was wholly inadequate in that there was no meaningful investigation into what had happened and no finding as to what had been said. Notes were taken of the 30 July meeting but were not disclosed to the Claimant and, according to the Respondent, not taken into account at any stage of the grievance process. The sole issue considered at both stages was whether Ms Scott intended to cause offence. The Respondent never engaged with the issue of whether the conduct amounted to harassment related to race. The appeal did not address the Claimant's concerns at all and instead put the onus on her to "produce evidence", which was unrealistic and missed the point. We do note, however, that the Respondent took the step of ensuring that the Claimant did not work with Ms Scott pending the outcome of the grievance.

54.5. The Claimant was able to remain at work for more than two months after the incident. The impact on her was nevertheless significant. There is strong medical evidence that she suffered from stress and anxiety, for which she was prescribed medication, as a result of the conduct and the failure of the Respondent to deal with it appropriately. The Respondent argued that the medical evidence suggests that it was the Claimant's work at the rape crisis helpline that triggered her symptoms, but we do not accept that. She may have mentioned that the voluntary work could also be stressful, but on any fair reading of the GP notes the main issue was the stress at work with the Respondent.

54.6. The terms of the resignation letter are curious, and potentially undermine the Claimant's evidence as to the seriousness of the impact on her, but given the strength of the medical evidence we place little weight on it.

54.7. We note that the Claimant had a history of depression, but it is clear that her symptoms in September and October 2018 were caused by the harassment and the Respondent's failure to acknowledge it or take it seriously. We note in particular that after leaving the Respondent the GP noted a significant improvement.

54.8. We have considered the relevance of the fact that some of the stress and hurt feelings were caused or exacerbated by the Respondent's handling of the grievance process, which is not relied upon as a separate discriminatory act. It was the failure of the Respondent to acknowledge the original act of harassment or take the Claimant's complaint seriously that caused particular upset. We consider that the impact on the Claimant's mental health is properly treated as harm caused directly by the act of discrimination (Essa v Laing Ltd [2004] EWCA Civ 2), so that it must be compensated in full.

55. Taking into account all of the above, we conclude that although this was an isolated incident, given the lack of any apology or acknowledgment of wrongdoing, and the substantial impact on the Claimant, it is appropriate to make an award in the middle band. We consider it should be at the lower end of that band. We award £10,000.

56. We award interest at 8% for the period from 30 July 2018 to the date of the hearing, 25 September 2019. This is 365 + 58 days. The interest amounts to £927.12.

57. The total award is therefore £10,927.12.

58. The recommendations requested by the Claimant do not satisfy the requirements of s.124(3) of the Equality Act 2010 in that they are not recommendations that the Respondent take steps "for the purpose of obviating or reducing the adverse effect *on the complainant*". We make no recommendations.

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Employment Judge Ferguson

Date: 9 October 2019